



## Transcript of **Allan J. Lichtman**

**Date:** April 20, 2016

**Case:** One Wisconsin Institute, Inc., et al. -v- Nichol, et al.

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1	IN THE UNITED STATES DISTRICT COURT	1
2	FOR THE WESTERN DISTRICT OF WISCONSIN	2
3	----- x	3
4	ONE WISCONSIN INSTITUTE, :	4
5	INC., et al., :	5
6	Plaintiffs, :	6
7	v. : Case No. 15-CV-324	7
8	GERALD C. NICHOL, et al., :	8
9	Defendants. :	9
10	----- X	10
11		11
12	Deposition of ALLAN J. LICHTMAN	12
13	Washington, DC	13
14	Wednesday, April 20, 2016	14
15	9:15 a.m.	15
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23	Job No.: 108795	23
24	Pages 1 - 193	24
25	Reported by: Debra A. Whitehead	25
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1	Deposition of ALLAN J. LICHTMAN, held at the	1
2	offices of:	2
3		3
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12	Pursuant to notice, before Debra A. Whitehead, an	12
13	Approved Reporter of the United States District Court	13
14	and Notary Public of the District of Columbia.	14
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<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 ALLAN J. LICHTMAN,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>5 BY MR. KAWSKI:</p> <p>6 Q Good morning, Dr. Lichtman.</p> <p>7 A <b>Good morning.</b></p> <p>8 Q My name is Clay Kawski. I am an Assistant</p> <p>9 Attorney General at the Wisconsin Department of</p> <p>10 Justice, and we're here today for your deposition.</p> <p>11 This is in the case One Wisconsin</p> <p>12 Institute, Inc., versus Gerald C. Nichol; Case</p> <p>13 Number 15-CV-324; United States District Court for</p> <p>14 the Western District of Wisconsin.</p> <p>15 Before I get started, I always go through</p> <p>16 the deposition basics. But I know you've been</p> <p>17 deposed a number of times. Correct?</p> <p>18 A <b>Correct.</b></p> <p>19 Q So you understand you have to give verbal</p> <p>20 responses. Correct?</p> <p>21 A <b>Correct.</b></p> <p>22 Q And that's for the court reporter to be</p> <p>23 able to take down your testimony.</p> <p>24 A <b>Correct.</b></p> <p>25 Q How many times have you been deposed?</p>	<p style="text-align: right;">7</p> <p>1 fair to me to assume that you understood it?</p> <p>2 A <b>Yes. If I don't understand it, I'll let</b></p> <p>3 <b>you know.</b></p> <p>4 Q Right. And if you need a break at any</p> <p>5 time today, just ask for it, but please don't do so</p> <p>6 until you've answered the question.</p> <p>7 A <b>I do appreciate that.</b></p> <p>8 Q What did you do to prepare for today's</p> <p>9 deposition?</p> <p>10 A <b>I reviewed my reports, spoke with</b></p> <p>11 <b>attorneys. And I keep getting inundated with some</b></p> <p>12 <b>new information. Apparently the state has been</b></p> <p>13 <b>regularly submitting new information, some of which</b></p> <p>14 <b>I have seen, some of which I have not seen yet --</b></p> <p>15 Q Okay.</p> <p>16 A <b>-- and -- or not had a chance to digest</b></p> <p>17 <b>yet.</b></p> <p>18 Q Okay. And you say "new information."</p> <p>19 What type of new information?</p> <p>20 A <b>The information, as I understand it -- and</b></p> <p>21 <b>I haven't seen all of it -- is information about the</b></p> <p>22 <b>petition process for getting IDs. That's most of</b></p> <p>23 <b>what I've seen. Plus depositions of some state</b></p> <p>24 <b>officials have been taken very recently. I have not</b></p> <p>25 <b>yet had a chance to review them, but I certainly</b></p>
<p style="text-align: right;">6</p> <p>1 A <b>I can't even count. Dozens, probably.</b></p> <p>2 Q Okay. When is the most recent?</p> <p>3 A <b>Probably in the Virginia voter ID case,</b></p> <p>4 <b>maybe a month or two ago.</b></p> <p>5 Q Okay. And have you testified at trial in</p> <p>6 that case yet?</p> <p>7 A <b>Yes.</b></p> <p>8 Q When was that?</p> <p>9 A <b>Just recently. You know, maybe a few</b></p> <p>10 <b>weeks ago.</b></p> <p>11 Q Okay. So as we go through the</p> <p>12 deposition -- we're doing a good job -- we need to</p> <p>13 avoid speaking over each other. So if I ask a</p> <p>14 question, let me finish. And then when you give</p> <p>15 your answer, I'll let you finish. And that will</p> <p>16 allow Mr. Spiva to object.</p> <p>17 Do you understand all that?</p> <p>18 A <b>Yes.</b></p> <p>19 Q And is there any reason that you cannot</p> <p>20 testify truthfully today, such as you're on alcohol</p> <p>21 or some kind of medication that --</p> <p>22 A <b>I'm not on anything.</b></p> <p>23 Q Okay.</p> <p>24 A <b>Just my heart medicine.</b></p> <p>25 Q Okay. If you answer my question, is it</p>	<p style="text-align: right;">8</p> <p>1 intend to review them before trial.</p> <p>2 I also understand some depositions have</p> <p>3 been taken of defendants' experts very recently,</p> <p>4 which I also would intend to review but have not had</p> <p>5 a chance to review as yet.</p> <p>6 There -- I did see some information about</p> <p>7 public outreach and education, some budget figures</p> <p>8 that recently came in. I quickly glanced at the</p> <p>9 district court opinion that came down about a week</p> <p>10 or so ago.</p> <p>11 And I also saw in press reports and in</p> <p>12 television clips comments by Congressman Grothman,</p> <p>13 former Senator Grothman, as well as one of the aides</p> <p>14 to, I believe it was a senator who was involved in</p> <p>15 the initial process of adopting voter photo ID.</p> <p>16 And those -- that material, which also</p> <p>17 just appeared in the press recently, was something I</p> <p>18 have taken cognizance of, as well.</p> <p>19 Q Have you read any recent press about the</p> <p>20 April 5th, 2016, election in Wisconsin?</p> <p>21 A <b>I have.</b></p> <p>22 Q What have you read?</p> <p>23 A <b>Just articles. I can't tell you the</b></p> <p>24 <b>particular journals. But there were a bunch of them</b></p> <p>25 <b>from Wisconsin that I did read.</b></p>

<p style="text-align: right;">9</p> <p>1 Q Did you read about the turnout for that 2 election?</p> <p>3 A Yes.</p> <p>4 Q And what did you learn about it?</p> <p>5 A <b>That it was a very high turnout for that</b> 6 <b>election, even higher than the recent previous</b> 7 <b>records in Wisconsin.</b></p> <p>8 Q We'll talk more about that as we get into 9 the specifics here.</p> <p>10 You said you read your reports in 11 preparation for today. Do you mean reports other 12 than those that were filed in this case?</p> <p>13 A No.</p> <p>14 Q Just the reports in this case?</p> <p>15 A Yes.</p> <p>16 Q Okay. And since you prepared your 17 February 16th report, have you formed any new 18 opinions that you're going to be offering in this 19 case?</p> <p>20 A <b>Very possibly. Because so much new</b> 21 <b>information has come down since that report. I'm</b> 22 <b>not sure they're new opinions, but they're</b> 23 <b>strengthened and reinforced opinions.</b></p> <p>24 Q Okay. Have you begun to prepare any 25 supplemental report?</p>	<p style="text-align: right;">11</p> <p>1 <b>Because, again, that's very recent material that I</b> 2 <b>just got. And as I said, there's a lot of new</b> 3 <b>material I have not absorbed, digested or analyzed</b> 4 <b>it yet.</b></p> <p>5 Q Have you spoken to Professors Burden or 6 Mayor?</p> <p>7 A <b>About this case, or about anything?</b></p> <p>8 Q About this case.</p> <p>9 A <b>Not that I can recall.</b></p> <p>10 Q But you have spoken to them?</p> <p>11 A <b>I don't know if I've ever spoken to</b> 12 <b>Professor Mayor. I may have in passing spoken to</b> 13 <b>Professor Burden because we've been involved in some</b> 14 <b>similar cases.</b></p> <p>15 <b>But if I spoke to him, it was truly in</b> 16 <b>passing --</b></p> <p>17 Q Okay.</p> <p>18 A <b>-- and nothing substantive.</b></p> <p>19 Q Okay. What cases do you recall that 20 you've been both involved in?</p> <p>21 A <b>I think North Carolina was one of the</b> 22 <b>cases in which we were both involved.</b></p> <p>23 Q Ohio?</p> <p>24 A <b>I was not involved in Ohio.</b></p> <p>25 Q Okay. Did you take any notes in</p>
<p style="text-align: right;">10</p> <p>1 A <b>I have not.</b></p> <p>2 Q And no one has asked you to do that yet?</p> <p>3 A <b>Not yet. You never know what lawyers</b> 4 <b>might ask you, but ...</b></p> <p>5 Q And you said you spoke to some attorneys. 6 Have you spoken to anyone else in preparation for 7 today's deposition?</p> <p>8 A No.</p> <p>9 Q Spoken to your wife?</p> <p>10 A <b>I always speak to my wife, but not about</b> 11 <b>the substance of this deposition.</b></p> <p>12 Q Okay.</p> <p>13 A <b>I'm sure she would be singularly</b> 14 <b>uninterested, but you never know.</b></p> <p>15 Q Have you spoken to any colleagues about 16 the case?</p> <p>17 A No.</p> <p>18 Q Spoken to any friends about the case?</p> <p>19 A <b>Only to the extent that I might have</b> 20 <b>mentioned I'm involved in a Wisconsin case, but not</b> 21 <b>beyond that, no.</b></p> <p>22 Q Okay. Did you review any other documents, 23 aside from what you've already mentioned?</p> <p>24 A <b>I took a quick glance at the deposition of</b> 25 <b>Professors Burden and Mayor but really quick.</b></p>	<p style="text-align: right;">12</p> <p>1 preparation for today's deposition?</p> <p>2 A No.</p> <p>3 Q Okay. Do you know when the trial date is 4 in this case?</p> <p>5 A <b>I believe it's May 16.</b></p> <p>6 Q And I think it's May 16, that week, and 7 then the week of the 23rd. Correct?</p> <p>8 A <b>That's my understanding. I'm not the</b> 9 <b>lawyer here.</b></p> <p>10 Q Sure. Are you available to testify during 11 those two weeks?</p> <p>12 A Yes.</p> <p>13 Q Okay. Are there any days that you're not 14 available to testify that you can think of right 15 now?</p> <p>16 A <b>Not that I know of at the moment. I told</b> 17 <b>the attorneys I was broadly available.</b></p> <p>18 Q Okay. There's a lot of material attached 19 to your expert -- first expert report, you know, 20 your CV and all the cases. So I don't want to get 21 into that any great detail. But just tell me about 22 your educational background.</p> <p>23 A <b>Sure. I received my -- I hate to say it,</b> 24 <b>my B.A. from Brandeis way back in 1967. I was</b> 25 <b>actually a science major until my senior year, when</b></p>

<p style="text-align: right;">13</p> <p>1 I switched to history. Science major explains my 2 interest in quantitative methodology and procedures. 3 I then received my Ph.D. from Harvard 4 University in 1973, with a specialty in American 5 political history and quantitative methodologies. 6 Q What was the subject of your dissertation? 7 A Presidential election of 1928, which 8 became one of my first books published by University 9 of North Carolina Press back in the late 1970s. 10 Q Okay. And so after you completed your 11 Ph.D., what was your next endeavor? 12 A The next endeavor was to assume a position 13 at American University, and I've been a professor 14 there since 1973, moving up in the ranks from 15 assistant -- I went directly to full professor. I 16 got early tenure and full professor. And about five 17 years ago I was appointed a distinguished professor. 18 Q Is that, like, emeritus status? 19 A No. 20 Q No? 21 A Quite the opposite. A distinguished 22 professor is a very special rank reserved for 23 professors of special accomplishment. 24 There are only, as far as I know, three or 25 four of us out of 800-some-odd faculty full time at</p>	<p style="text-align: right;">15</p> <p>1 Q And you're still working there full time 2 teaching, as well? 3 A Yes. Although as a distinguished 4 professor I have a -- we do a teaching load. But I 5 am a regular, full-time faculty member. 6 Q Are you teaching this semester? 7 A I am. 8 Q What are you teaching? 9 A I'm teaching a course in American 10 politics. 11 Q Okay. 12 A History of American politics. 13 Q For undergraduate or graduate students? 14 A It includes both undergraduate and 15 graduate students. 16 Q Okay. Have you taught courses that 17 include statistical analysis of political matters? 18 A Yes. 19 Q What courses? 20 A Actually, while I was in graduate school 21 at Harvard, I taught a course in statistical 22 methodologies at Brandeis University. And I've 23 taught courses in statistical methodology at 24 American University, although not recently. 25 Q Okay. What is the most recent statistical</p>
<p style="text-align: right;">14</p> <p>1 the American University. It's a university 2 designation. It is not a departmental designation. 3 Q Okay. Why did you select American 4 University, or did they select you? I just want to 5 know how you -- 6 A We're talking about 1973. 7 Washington, DC. 8 Q Okay. 9 A You know, I'm a political historian. What 10 better place to be? And have you ever been to 11 American University? 12 Q No. 13 A It's a -- it's a beautiful campus, 14 wonderful place. Great place to be. 15 Q Okay. And have you done any -- visited 16 other universities? 17 A I was a visiting distinguished professor 18 at the California Institute of Technology in, gosh, 19 1980, '81. 20 Q Okay. But otherwise you've been at 21 American? 22 A Correct. 23 Q Okay. 24 A My only regular appointment for the last 25 43 years has been American University.</p>	<p style="text-align: right;">16</p> <p>1 course you've taught? 2 A Oh, it's a long time ago at American 3 University. I don't remember exactly. 4 And the reason I haven't taught it 5 recently, quite frankly, is there's not that much 6 interest among historians in quantitative 7 methodologies. Most of those who go into history 8 have more of a humanities than a social science 9 approach. 10 Q So who are the giants of quantitative 11 methodologies in history? 12 A Oh, I would say, you know, probably the 13 greatest giant is Robert Fogel, winner -- he's an 14 economic historian, the winner of Nobel Prize in 15 economics. You can't get more of an accolade than 16 that. 17 J. Morgan Kousser, at the California 18 Institute of Technology is another pioneer. Maris 19 Vinovskis, who was at Harvard when I was at Harvard, 20 would be another pioneer in that area. Richard 21 Jensen, Paul Kleppner are others who -- you know, of 22 my generation who have worked on that. 23 Q Okay. I guess just tell me about your 24 discipline. You say that you -- you know, you're an 25 expert in history and quantitative analysis of</p>

<p style="text-align: right;">17</p> <p>1 history.</p> <p>2 What does that mean?</p> <p>3 <b>A Before I answer your question, let me say</b></p> <p>4 <b>my expertise is not limited to that.</b></p> <p>5 <b>Q Okay.</b></p> <p>6 <b>A Those are two of my areas of expertise.</b></p> <p>7 <b>Q Sure. I'll try and get into what areas of</b></p> <p>8 <b>expertise are relevant to this case and which are</b></p> <p>9 <b>not later.</b></p> <p>10 <b>A Sure.</b></p> <p>11 <b>Q But tell me about generally that field.</b></p> <p>12 <b>A Yeah. As I approach it, my work in</b></p> <p>13 <b>quantitative history combines traditional historical</b></p> <p>14 <b>methods and mathematical analysis. That is, I</b></p> <p>15 <b>research manuscript sources. I go to primary</b></p> <p>16 <b>sources. Letters, diaries, legislative histories,</b></p> <p>17 <b>things of that nature. As well as doing</b></p> <p>18 <b>quantitative analysis.</b></p> <p>19 <b>So for my dissertation and my first</b></p> <p>20 <b>book -- the book was Prejudice and the Old Politics:</b></p> <p>21 <b>The Presidential Election of 1928 -- I looked at</b></p> <p>22 <b>paper collections. I did a lot of primary source</b></p> <p>23 <b>research. And I also did an extensive quantitative</b></p> <p>24 <b>analysis of voting patterns in the election of 1928</b></p> <p>25 <b>and also compared those voting patterns with other</b></p>	<p style="text-align: right;">19</p> <p>1 <b>movement and my study of F.D.R. and the Jews, both</b></p> <p>2 <b>of which have won major national awards.</b></p> <p>3 <b>Q You mentioned the 13 keys, the book and</b></p> <p>4 <b>the concept.</b></p> <p>5 <b>A Right.</b></p> <p>6 <b>Q Where does -- does election procedure or</b></p> <p>7 <b>mechanics play any part in the 13 keys?</b></p> <p>8 <b>A Not directly. Of course indirectly,</b></p> <p>9 <b>absolutely.</b></p> <p>10 <b>Q Okay. How indirectly?</b></p> <p>11 <b>A Indirectly it sets up the system that</b></p> <p>12 <b>is -- you know, we have a regular system of</b></p> <p>13 <b>presidential elections. We have known procedures</b></p> <p>14 <b>for presidential elections, many of which go back to</b></p> <p>15 <b>the original constitution and the 12th amendment to</b></p> <p>16 <b>the constitution of course.</b></p> <p>17 <b>We have a relatively stable two-party</b></p> <p>18 <b>system in the United States. We have a</b></p> <p>19 <b>presidential, not a parliamentary system. We have a</b></p> <p>20 <b>winner-take-all system.</b></p> <p>21 <b>So all of those systematic elements of</b></p> <p>22 <b>American presidential elections inform and provide</b></p> <p>23 <b>the context for the keys to the White House.</b></p> <p>24 <b>However, the keys themselves do not directly refer</b></p> <p>25 <b>to election procedure or administration. Rather,</b></p>
<p style="text-align: right;">18</p> <p>1 <b>early 20th century voting patterns.</b></p> <p>2 <b>That was also expressed in an article I</b></p> <p>3 <b>published back in the 1970s, as well, in the</b></p> <p>4 <b>American Historical Review, the leading journal in</b></p> <p>5 <b>the field.</b></p> <p>6 <b>And I have also published a methodological</b></p> <p>7 <b>works on quantitative analysis in history, in such</b></p> <p>8 <b>journals as Evaluation Review, Journal of</b></p> <p>9 <b>Inter-Disciplinary History, Social Science History.</b></p> <p>10 <b>I also incorporated mathematical and</b></p> <p>11 <b>traditional historical methodologies in my series of</b></p> <p>12 <b>books on the keys to the White House, which is a</b></p> <p>13 <b>system for explaining and predicting American</b></p> <p>14 <b>presidential elections.</b></p> <p>15 <b>I have also published highly technical</b></p> <p>16 <b>articles on that topic in journals such as the</b></p> <p>17 <b>Journal of the National Academy of Sciences, one of</b></p> <p>18 <b>the three leading scientific journals in the world;</b></p> <p>19 <b>as well as the International Journal of Forecasting</b></p> <p>20 <b>and other scholarly articles -- other scholarly</b></p> <p>21 <b>journals.</b></p> <p>22 <b>Similarly, a combination of quantitative</b></p> <p>23 <b>and traditional historical methodologies have</b></p> <p>24 <b>informed some of my more recent works, such as my</b></p> <p>25 <b>study of the rise of the American conservative</b></p>	<p style="text-align: right;">20</p> <p>1 <b>the keys themselves are primarily referential to</b></p> <p>2 <b>presidential performance by the party holding the</b></p> <p>3 <b>White House and the strength and unity of the party</b></p> <p>4 <b>holding the White House.</b></p> <p>5 <b>The basic conceptual, as opposed to the</b></p> <p>6 <b>mathematical theory behind them is that elections</b></p> <p>7 <b>for president are primarily viewed as referenda on</b></p> <p>8 <b>the performance of the party holding the White</b></p> <p>9 <b>House. And the 13 keys are a way of modeling the</b></p> <p>10 <b>voter's view of presidential performance and coming</b></p> <p>11 <b>up with a decision rule that enables you to make</b></p> <p>12 <b>predictions.</b></p> <p>13 <b>Q For example, a voter photo identification</b></p> <p>14 <b>requirement, which of the 13 keys would that fit</b></p> <p>15 <b>into, if any?</b></p> <p>16 <b>A Probably none of them directly.</b></p> <p>17 <b>One of the nice things about the keys is,</b></p> <p>18 <b>they've held over a very long period of American</b></p> <p>19 <b>electoral history. Retrospectively back to Lincoln</b></p> <p>20 <b>and Douglas in 1960, and prospectively, for actual</b></p> <p>21 <b>realtime forecasts prior to the presidential</b></p> <p>22 <b>election from 1984 to 2012. So they've held</b></p> <p>23 <b>robustly through an enormous variety of changes in</b></p> <p>24 <b>our society, our economy, our demography, our</b></p> <p>25 <b>technologies, as well as our election procedures.</b></p>



<p style="text-align: right;">21</p> <p>1 Q Is it fair to say that election procedures 2 would not impact the outcome under the 13 keys? 3 A It depends what they are. Obviously the 4 keys are based upon precedent. And any sharp break 5 in precedent could have an effect on anything 6 involved in presidential elections. 7 Q What about a voter photo identification 8 requirement? 9 A As I said, the keys are robust through 10 huge changes in election procedures. And there was 11 nothing directly referential to voter identification 12 of any kind. 13 Q Okay. Have you been involved in politics? 14 A Yes. 15 Q What has been your involvement? 16 A I've kind of been -- not for a very long 17 time, not for decades, I've consulted with 18 politicians and political staffers and consultants. 19 I've consulted with -- gosh, it's a shame to say, 20 some of those I've consulted with have passed away. 21 But George McGovern, Ted Kennedy. And not 22 directly with Ronald Reagan. But quite directly, 23 probably my most extensive consultant with a 24 staffer, who has also passed away, was Lee Atwater, 25 the political director of the Ronald Reagan White</p>	<p style="text-align: right;">23</p> <p>1 Congress. You know, they have approval ratings 2 lower than Atilla the Hun, yet you continue to be 3 electing the same kind of people. 4 And I made the argument, While, you know, 5 I've never held office, never been a politician, my 6 experience as an educator, my experience in voting 7 rights, more than qualified me for United States 8 Senate. And I would be a different kind of senator. 9 I was kind of modeling myself on the late 10 Paul Wellstone, kind of the last -- as far as I 11 know, the last educator, full-time educator to be 12 elected to the United States. 13 You know, I really got nowhere in the 14 campaign. I didn't have enough money. I was shut 15 out by the party because I was running against the 16 grain of the party. I was even shut out of the one 17 televised senatorial debate. 18 Q Do you have any intention to run for 19 office again? 20 A Absolutely not. Not been involved in 21 politics for ten years. I'm 69 years old. I have 22 utterly no intention of becoming involved in 23 politics again. 24 Q The message that you were putting forth in 25 2006, is it not similar to the message that some of</p>
<p style="text-align: right;">22</p> <p>1 House. 2 So you can see my experience is pretty 3 ancient. I haven't consulted politically really in 4 recent years. But I did run for office. I ran as a 5 maverick against the grain of the Democratic party 6 in the 2006 Democratic primary for U.S. Senate, 7 where I was spectacularly unsuccessful. I think I'm 8 a much better professor than I am a political 9 candidate. 10 And I have not been involved in politics 11 over the last ten years, except as a commentator and 12 as an analyst. But I've not done consulting, I've 13 not run for anything. 14 Q What spurred you to run in 2006? 15 A I felt that we were getting too much of 16 the same kind of politician. Kind of your 17 professional politician who looked at office serving 18 as a career and was not really responding to what I 19 thought were some of the urgent needs of the 20 country. 21 So I was making the argument, as I said as 22 a maverick, running against the grain of the party. 23 And I since have been very critical of the 24 Democratic party. And this is all in Maryland. I'm 25 making the argument to the voters, You hate the</p>	<p style="text-align: right;">24</p> <p>1 the major political candidates in the presidential 2 race today are putting forth? 3 A It is similar to what you hear from some 4 of the presidential candidates. Maybe I was ten 5 years too early, you never know. 6 Q And you said that you did some political 7 consulting. Was that paid work? 8 A I did some paid work and some unpaid work. 9 My main paid work was not directly political 10 consulting, but I was -- the consulting historian 11 for George McGovern's production of his memoirs. I 12 was not paid by Mr. Atwater. 13 And, by the way, I am mentioned in Lee 14 Atwater's biography. Bad Boy talks about his work 15 with me on the keys to the White House. 16 Q Okay. Have you ever worked as a poll 17 worker as an election precinct? 18 A I was a precinct official I think a long 19 time ago, you know, more than maybe 20 -- maybe some 20 20 years ago. But I have not worked as a precinct 21 official per se. 22 Q So when I say that, I mean someone who was 23 helping people get their ballot. Have you ever done 24 that? 25 A That is how I understood your question.</p>

<p style="text-align: right;">25</p> <p>1 <b>And I don't recall having done that.</b></p> <p>2 Q Okay. Have you ever been to Wisconsin?</p> <p>3 A Yes.</p> <p>4 Q How many times?</p> <p>5 A Oh, maybe once or twice, and not recently.</p> <p>6 Q Have you ever voted in Wisconsin?</p> <p>7 A No.</p> <p>8 Q Never lived there?</p> <p>9 A No.</p> <p>10 Q How does one vote at a polling place in</p> <p>11 Wisconsin?</p> <p>12 A I'm not sure I understand your question.</p> <p>13 Q What are the steps a voter needs to take</p> <p>14 to get a ballot in a polling place in Wisconsin?</p> <p>15 A Well, my understanding is to get a ballot</p> <p>16 in a polling place in Wisconsin you have to present</p> <p>17 yourself to the election officials, you have to</p> <p>18 present an -- one of a list of acceptable photo</p> <p>19 identification that has to be verified by the</p> <p>20 election official.</p> <p>21 If you don't have photo identification or</p> <p>22 your photo identification is not deemed to be</p> <p>23 acceptable, for example as I understand it a student</p> <p>24 ID that doesn't have an expiration date, then you</p> <p>25 are supposed to be offered a provisional ballot.</p>	<p style="text-align: right;">27</p> <p>1 precinct -- because, you know, there are laws -- if</p> <p>2 this is what you're asking me, I am familiar. There</p> <p>3 are laws about what precinct you have to vote in.</p> <p>4 So, you know, there are a number of other</p> <p>5 things that you have to satisfy in order to get a</p> <p>6 regular ballot.</p> <p>7 Q Do you have to state your name?</p> <p>8 A I'm not sure if you state your name or</p> <p>9 present your name on a photo ID. I'm not sure</p> <p>10 whether you have to verbally do it or do it with</p> <p>11 documentation. I would imagine whether you state it</p> <p>12 or not, you have to do it with documentation.</p> <p>13 Q Do you have to state your current address?</p> <p>14 A I'm not certain whether you have to state</p> <p>15 your current address or not.</p> <p>16 Q Does the address on your ID card have to</p> <p>17 be current?</p> <p>18 A I believe the address on your ID card, if</p> <p>19 the ID card is unexpired, and I think you've got a</p> <p>20 year's waiting time, does not have to be the current</p> <p>21 address.</p> <p>22 Q Are there any other requirements that you</p> <p>23 must do before obtaining a ballot as a voter on</p> <p>24 election day in Wisconsin?</p> <p>25 A Beyond the four or five I've already</p>
<p style="text-align: right;">26</p> <p>1 <b>And a provisional ballot is a ballot, as I</b></p> <p>2 <b>understand it in Wisconsin, that may or may not be</b></p> <p>3 <b>counted. That you've got to come back, as I</b></p> <p>4 <b>understand it, by 8 o'clock that evening to the</b></p> <p>5 <b>polling place or to a state office by the Friday</b></p> <p>6 <b>after the election.</b></p> <p>7 <b>And if you don't do that, my understanding</b></p> <p>8 <b>is that your provisional ballot will not be counted.</b></p> <p>9 <b>If, however, you have an ID that is deemed</b></p> <p>10 <b>acceptable by the election official, you can then go</b></p> <p>11 <b>on to cast a regular ballot that doesn't require any</b></p> <p>12 <b>additional action on your part as a voter.</b></p> <p>13 Q In addition to showing the ID, are there</p> <p>14 any other steps a voter must take before obtaining a</p> <p>15 ballot on election day?</p> <p>16 A I'm not certain of other steps.</p> <p>17 Q So you have not looked at what Wisconsin</p> <p>18 law requires to obtain a ballot as a voter?</p> <p>19 A I've looked at the voter ID requirements,</p> <p>20 but I'm not aware of other requirements that you</p> <p>21 would have to go through to get a ballot in</p> <p>22 Wisconsin.</p> <p>23 My understanding is, if you present</p> <p>24 yourself at the polling place, you're on the poll</p> <p>25 book as a registered voter, you're at the right</p>	<p style="text-align: right;">28</p> <p>1 mentioned, I'm not aware of others.</p> <p>2 Q Do you have to sign anything as a voter to</p> <p>3 get a ballot?</p> <p>4 A I'm not aware that you have to sign</p> <p>5 anything.</p> <p>6 Q Do you have to show any other document?</p> <p>7 A I'm not sure what you mean by other</p> <p>8 documents.</p> <p>9 Q Other than a qualifying photo ID?</p> <p>10 A I don't believe you have to show other</p> <p>11 documents.</p> <p>12 Q Are you familiar with the requirements of</p> <p>13 how to register to vote in Wisconsin?</p> <p>14 A Generally. But, you know, I know you can</p> <p>15 register in person. You can register at DMV and</p> <p>16 welfare offices. You can register online. You can</p> <p>17 register by mail. So --</p> <p>18 Q You can register online?</p> <p>19 A I believe you can.</p> <p>20 Q Okay. Are you -- let me ask you this:</p> <p>21 How does one obtain an absentee ballot in Wisconsin?</p> <p>22 A I'm not sure of the exact mechanisms. But</p> <p>23 normally to obtain an absentee ballot you would send</p> <p>24 in a mail request for the absentee ballot. And in</p> <p>25 Wisconsin my understanding is you also have to</p>



<p style="text-align: right;">29</p> <p>1 <b>submit a qualifying photo ID to get an absentee</b></p> <p>2 <b>ballot.</b></p> <p>3 Q Have you voted recently in Maryland?</p> <p>4 A <b>Yes.</b></p> <p>5 Q Did you vote in person?</p> <p>6 A <b>Yes.</b></p> <p>7 Q On election day?</p> <p>8 A <b>I voted both on election day and early</b></p> <p>9 <b>voting.</b></p> <p>10 Q When is the last time you voted?</p> <p>11 A <b>The last election.</b></p> <p>12 Q When was that?</p> <p>13 A <b>2014, I believe.</b></p> <p>14 Q There hasn't been a presidential primary</p> <p>15 recently?</p> <p>16 A <b>No. It's next week.</b></p> <p>17 Q Okay. You haven't voted early for that</p> <p>18 presidential primary?</p> <p>19 A <b>No.</b></p> <p>20 Q Do you intend to vote on election day?</p> <p>21 A <b>No.</b></p> <p>22 Q You intend to vote early?</p> <p>23 A <b>I intent to vote absentee.</b></p> <p>24 Q And how would you do absentee in Maryland?</p> <p>25 A <b>I did it online.</b></p>	<p style="text-align: right;">31</p> <p>1 Q Why did you vote absentee -- or why do you</p> <p>2 intend to vote absentee from home?</p> <p>3 A <b>I'm going to be out of the state.</b></p> <p>4 Q So that's more convenient for you?</p> <p>5 A <b>Well, I'm not going to be here for</b></p> <p>6 <b>election day.</b></p> <p>7 Q It's more convenient for you?</p> <p>8 A <b>No. It's necessary.</b></p> <p>9 Q Okay.</p> <p>10 A <b>Since I'm not here in the state, I either</b></p> <p>11 <b>have to vote early or I have to vote absentee ipso</b></p> <p>12 <b>facto.</b></p> <p>13 Q Have you ever voted absentee by mail?</p> <p>14 A <b>No.</b></p> <p>15 Q Why not?</p> <p>16 A <b>Because I have previously been in the</b></p> <p>17 <b>state on election day.</b></p> <p>18 Q Do you think that voting absentee via mail</p> <p>19 is a convenient method for voters?</p> <p>20 A <b>It certainly can be, absolutely.</b></p> <p>21 Q Why would it be convenient?</p> <p>22 A <b>Because if you're not in the state, that's</b></p> <p>23 <b>a way of making your vote count.</b></p> <p>24 Q What if you don't have time to vote on</p> <p>25 election day; would that also make it convenient?</p>
<p style="text-align: right;">30</p> <p>1 Q Okay. So --</p> <p>2 A <b>You could do it by mail as well.</b></p> <p>3 Q Okay. So in Wisconsin can you vote</p> <p>4 absentee by mail?</p> <p>5 A <b>Yes.</b></p> <p>6 Q And how would one obtain an absentee</p> <p>7 ballot by mail in Wisconsin?</p> <p>8 A <b>I believe you would have to apply for an</b></p> <p>9 <b>absentee ballot. You can send in a mail request.</b></p> <p>10 <b>I'm not -- I have to tell you, I'm not an</b></p> <p>11 <b>expert on every jot and tittle of every regulation</b></p> <p>12 <b>on this in Wisconsin.</b></p> <p>13 Q Okay. Wouldn't it seem important to be an</p> <p>14 expert on every jot and tittle to give an expert</p> <p>15 opinion in this case?</p> <p>16 A <b>No.</b></p> <p>17 Q No? Why not?</p> <p>18 A <b>Because my expert opinion is based upon</b></p> <p>19 <b>not knowing every single detail of election</b></p> <p>20 <b>administration in Wisconsin, but more than</b></p> <p>21 <b>sufficient detail to give opinions about the effects</b></p> <p>22 <b>of such things as a voter identification laws,</b></p> <p>23 <b>restriction of early voting and the other matters on</b></p> <p>24 <b>which I opine. And I provided extensive</b></p> <p>25 <b>documentation of my opinions.</b></p>	<p style="text-align: right;">32</p> <p>1 A <b>Sure.</b></p> <p>2 Q What if you're working on election day,</p> <p>3 would that also make it convenient?</p> <p>4 A <b>Clearly.</b></p> <p>5 Q In Wisconsin, under what circumstances can</p> <p>6 a voter obtain an absentee ballot by mail?</p> <p>7 A <b>I'm not sure I understand your question.</b></p> <p>8 Q Do they have to have any excuse to --</p> <p>9 A <b>I don't believe so, no.</b></p> <p>10 Q Is Wisconsin a no excuse absentee voting</p> <p>11 state?</p> <p>12 A <b>I believe that's right.</b></p> <p>13 Q Okay. So in Wisconsin a voter can avoid</p> <p>14 the lines that might exist for absentee voting in</p> <p>15 person by requesting an absentee ballot by mail.</p> <p>16 Correct?</p> <p>17 A <b>That's correct.</b></p> <p>18 Q So they can vote from home and avoid the</p> <p>19 lines at the polling place. Correct?</p> <p>20 A <b>If they go -- but they also have to go</b></p> <p>21 <b>through a process to get the absentee ballot. It's</b></p> <p>22 <b>not as if, Oh, I'm not going to spend any time on</b></p> <p>23 <b>this. I have to figure out the absentee ballot</b></p> <p>24 <b>process. I've got to get an absentee ballot. I've</b></p> <p>25 <b>got to fill out the absentee ballot. I've got to</b></p>

<p style="text-align: right;">33</p> <p>1 send in the absentee ballot by mail. And I've got</p> <p>2 to make sure I have the right kind of photo ID,</p> <p>3 because Wisconsin is one of the very few states that</p> <p>4 requires a photo ID with an absentee ballot.</p> <p>5 So kind of the premise of your question is</p> <p>6 not exactly correct. It's not as if you're</p> <p>7 necessarily avoiding time and energy. You may be</p> <p>8 spending more time and energy going through the</p> <p>9 absentee ballot process than simply showing up at</p> <p>10 the polling place and voting, even when there are</p> <p>11 long hours. And that would be particularly true for</p> <p>12 those of less education, those who might have</p> <p>13 difficulty with the English language, those of lower</p> <p>14 socio-economic status generally.</p> <p>15 Q So if I -- in Wisconsin if I make a</p> <p>16 request for an absentee ballot by mail, I can have</p> <p>17 absentee ballots sent to me for every election in</p> <p>18 that calendar year. Correct?</p> <p>19 A I'm not exactly certain, but I would</p> <p>20 accept your representation on that. That seems like</p> <p>21 a normal process.</p> <p>22 Q So for every election in that calendar</p> <p>23 year, I would not have to show up at a polling place</p> <p>24 to vote. Correct?</p> <p>25 A If that's correct. I'm not sure you can</p>	<p style="text-align: right;">35</p> <p>1 someone who does not have the ID?</p> <p>2 A Both.</p> <p>3 Q Okay. And explain why.</p> <p>4 A First, what we do know is, there's a lot</p> <p>5 of voter confusion about IDs. You know, most voters</p> <p>6 cannot name their congressman. And you cannot</p> <p>7 expect the average voter to necessarily know all the</p> <p>8 in's and out's of a voter photo ID process,</p> <p>9 particularly one as complex at the Wisconsin voter</p> <p>10 ID requirement. Where, for example, you can't just</p> <p>11 use your regular college student ID. Student IDs</p> <p>12 have to fulfill a set of very specific requirements</p> <p>13 that are not typical of other states. You can't use</p> <p>14 your government employee ID, for example.</p> <p>15 So even those who might have IDs are going</p> <p>16 to be confused. And then not necessarily going to</p> <p>17 know whether the ID they have is legitimate for</p> <p>18 voting.</p> <p>19 I cite a study, for example, of Texas in</p> <p>20 my report, which indicates very large numbers of</p> <p>21 individuals, in a very competitive congressional</p> <p>22 district, 23 in Texas, did not vote. Not because</p> <p>23 they didn't have IDs, but because they were</p> <p>24 confused. They weren't certain whether the ID they</p> <p>25 have really was a legitimate ID.</p>
<p style="text-align: right;">34</p> <p>1 get it all at once. But if you're saying you can,</p> <p>2 that is certainly possible.</p> <p>3 Q And we're going to talk about your expert</p> <p>4 reports.</p> <p>5 A Sure.</p> <p>6 Q You don't mention the mail-in absentee</p> <p>7 option at all in your reports; do you?</p> <p>8 A I do.</p> <p>9 Q You do?</p> <p>10 A I do.</p> <p>11 Q Okay. And what do you mention about it?</p> <p>12 A I talk about several things about it. I</p> <p>13 mean, we're talking by memory now, because I don't</p> <p>14 have the report in front of me.</p> <p>15 Q Yes.</p> <p>16 A But I talk about the fact that I believe</p> <p>17 Wisconsin was the first state to require photo ID</p> <p>18 for absentee mail in ballots, with certain limited</p> <p>19 exceptions. And that makes the absentee ballot</p> <p>20 process yet more onerous for the kinds of people I'm</p> <p>21 talking about in my report, particularly minorities</p> <p>22 and those of lower socio-economic standing, which is</p> <p>23 also highly correlated with minority status.</p> <p>24 Q Now, are you saying that it's harder for</p> <p>25 someone who already has the ID or it's harder for</p>	<p style="text-align: right;">36</p> <p>1 So even those who have IDs, there is going</p> <p>2 to be real issues when it comes to whether it be</p> <p>3 absentee ballot or whether it be ballots at the</p> <p>4 polls. And because Wisconsin imposes this extra</p> <p>5 requirement of a photo ID for absentee ballots, that</p> <p>6 poses a particular barrier for minorities.</p> <p>7 And that study in Texas showed that those</p> <p>8 who didn't vote because they didn't think they had</p> <p>9 acceptable IDs were heavily minority.</p> <p>10 Q Did you write that Texas study?</p> <p>11 A No.</p> <p>12 Q Have you studied the issue of voter</p> <p>13 confusion in Wisconsin as to the voter photo ID law?</p> <p>14 A Yes.</p> <p>15 Q And in what way have you done that?</p> <p>16 A There have been polls on this. There were</p> <p>17 polls about -- before the 2014 election, when people</p> <p>18 were confused not only about what particular ID they</p> <p>19 needed, but whether they needed an ID or not.</p> <p>20 And depending on the poll you look at,</p> <p>21 we're not talking about one or two percent of the</p> <p>22 public confused about something, even that basic,</p> <p>23 far more basic than the intricacies of the voter ID</p> <p>24 law. Anywhere from 25 percent to 50 percent of</p> <p>25 registered voters. And when you looked at the</p>

<p style="text-align: right;">37</p> <p>1 registered voters, they were more -- those who were</p> <p>2 confused were more heavily minority.</p> <p>3 Q And so that's from 2014.</p> <p>4 Have you done any studies of Wisconsin as</p> <p>5 to voter confusion about photo ID in the last two</p> <p>6 years?</p> <p>7 A No. That's the last poll I saw on that.</p> <p>8 Q You don't know if there have been any</p> <p>9 other polls done since that time?</p> <p>10 A I am not aware of any, but there certainly</p> <p>11 may have been.</p> <p>12 Q Are you offering any expert opinion in</p> <p>13 this case about whether there is voter confusion</p> <p>14 about the photo identification requirement in the</p> <p>15 last two years?</p> <p>16 A I might be.</p> <p>17 Q You might be?</p> <p>18 A I might be.</p> <p>19 Q Where does that appear in either of your</p> <p>20 expert reports?</p> <p>21 A It wasn't in my expert reports. But</p> <p>22 that's not what you asked me. You asked me if I</p> <p>23 might be giving testimony on this. And, of course,</p> <p>24 one of the things that I have been asked to do was</p> <p>25 to respond to materials, analyses, reports, evidence</p>	<p style="text-align: right;">39</p> <p>1 expert work?</p> <p>2 A I doubt that. But I can't answer your</p> <p>3 question because I have never counted separately</p> <p>4 income from my expert work as opposed to lots of</p> <p>5 other outside incomes.</p> <p>6 Q Would it be fair to say that you've earned</p> <p>7 millions of dollars from your expert work?</p> <p>8 A Probably so over a more than 30-year</p> <p>9 period. But again, I have not counted.</p> <p>10 Q In the last year how much have you earned</p> <p>11 from your expert -- paid expert work?</p> <p>12 A I don't know. But a considerable amount,</p> <p>13 because there has just been an avalanche of</p> <p>14 litigation over the past -- just the thing about</p> <p>15 being an expert. Sometimes you earn nothing, and</p> <p>16 sometimes you earn a lot because of just the way in</p> <p>17 which litigation goes.</p> <p>18 And I have nothing to do with that.</p> <p>19 That's, you know, just how our political and legal</p> <p>20 system works.</p> <p>21 Q And you said you testified recently in the</p> <p>22 Virginia case in trial. Correct?</p> <p>23 A Yes.</p> <p>24 Q And so you were represented -- or you were</p> <p>25 testifying for the plaintiffs in that case?</p>
<p style="text-align: right;">38</p> <p>1 presented by the state or by experts for the state.</p> <p>2 And I did see some discussion of that</p> <p>3 issue in one of the depositions that I briefly</p> <p>4 reviewed.</p> <p>5 Q Okay.</p> <p>6 A So the state did bring that up.</p> <p>7 Q And we're going to be talking about the</p> <p>8 poll that you mentioned, very later on in this</p> <p>9 deposition. It's the Marquette University Law</p> <p>10 School poll. Is that the one you're talking about?</p> <p>11 A Yes.</p> <p>12 Q Okay. We talked a little bit about your</p> <p>13 past expert work. How many cases have you been</p> <p>14 involved in as a paid expert?</p> <p>15 A Oh, my gosh.</p> <p>16 Q Estimate.</p> <p>17 A I never counted.</p> <p>18 Q Eighty?</p> <p>19 A Eighty-five or more.</p> <p>20 Q Okay. Have you earned over \$2 million</p> <p>21 from your expert work?</p> <p>22 A You mean over the last 30-some-odd years?</p> <p>23 Q Yes.</p> <p>24 A Probably so. I've never counted.</p> <p>25 Q Have you earned over \$5 million from your</p>	<p style="text-align: right;">40</p> <p>1 A Yes.</p> <p>2 Q In the last five years, have you testified</p> <p>3 for the defendants in any case?</p> <p>4 A Yes.</p> <p>5 Q Which case?</p> <p>6 A Two cases come to mind immediately. But I</p> <p>7 think there are three, probably. So it's been a</p> <p>8 number.</p> <p>9 You want specifics --</p> <p>10 Q Yes.</p> <p>11 A -- on the cases? Yeah.</p> <p>12 The ones I recall, 2011 I testified in</p> <p>13 court on behalf of the defendants in the State of</p> <p>14 Illinois on the challenge to the State of Illinois</p> <p>15 congressional redistricting plan.</p> <p>16 I was also the expert for defendants in</p> <p>17 Illinois in a case challenging the state legislative</p> <p>18 redistricting plan.</p> <p>19 I submitted reports in that case and was</p> <p>20 deposed in that case but never ultimately testified</p> <p>21 in court because the case was decided on summary</p> <p>22 judgment.</p> <p>23 And then just recently I testified via</p> <p>24 report, because the judges did not ask for oral</p> <p>25 testimony. They -- they based their opinion on</p>

<p style="text-align: right;">41</p> <p>1 written submitted materials. And that was, I was</p> <p>2 testifying on behalf of defendants on a challenge</p> <p>3 brought by black plaintiffs against congressional</p> <p>4 redistricting plan in the State of Florida. I think</p> <p>5 the opinion on that just came out a couple of days</p> <p>6 ago.</p> <p>7 Q Okay. So --</p> <p>8 A Those are the ones I recall.</p> <p>9 Q So of the approximately 85 cases in which</p> <p>10 you have served as a paid expert, can you estimate</p> <p>11 how many in which you've testified for the state or</p> <p>12 the defendants?</p> <p>13 A I'd say a minority, but, you know, I</p> <p>14 certainly have, as you've seen, even recently</p> <p>15 testified for state and defendants.</p> <p>16 Q Five?</p> <p>17 A Oh, it's more than five.</p> <p>18 Q Ten?</p> <p>19 A At least ten.</p> <p>20 Q Fifteen?</p> <p>21 A I haven't counted, so...</p> <p>22 Q Twenty-five?</p> <p>23 MR. SPIVA: Objection. Calls for</p> <p>24 speculation.</p> <p>25 You can answer.</p>	<p style="text-align: right;">43</p> <p>1 political history, quantitative methodologies,</p> <p>2 political analysis, would qualify me as someone with</p> <p>3 the expertise to testify on legislative intent. And</p> <p>4 I have done so in quite a few cases.</p> <p>5 Q And when you say "historical analysis," I</p> <p>6 think of the past, the far past. Your work in this</p> <p>7 case is focused on the very recent past. Correct?</p> <p>8 A Yes. But I've got to qualify what you</p> <p>9 say. My historical work goes right up to the</p> <p>10 present. And I also do a lot of political analysis.</p> <p>11 In other words, for example, we talked</p> <p>12 about the keys to the White House, my system for</p> <p>13 predicting and explaining presidential election</p> <p>14 results.</p> <p>15 I take that right up to the present, you</p> <p>16 know. I predicted the 2012 election. I'm working</p> <p>17 on predicting the 2016 American presidential</p> <p>18 election.</p> <p>19 My book, my 2008 book on the rise of the</p> <p>20 American conservative movement, took it right up to</p> <p>21 the Bush administration.</p> <p>22 So it would be a misstatement to say my</p> <p>23 work is only focused on the distant past. My work</p> <p>24 combines and puts together work on the past going,</p> <p>25 you know, well back into history, with considerable</p>
<p style="text-align: right;">42</p> <p>1 A I am speculating. I don't think it's 25.</p> <p>2 Q Okay.</p> <p>3 A Yeah, I'm sure it's not 25, but it's</p> <p>4 probably ten.</p> <p>5 Q And in the recent Virginia case, which was</p> <p>6 about voter photo identification, your opinion went</p> <p>7 to what issue?</p> <p>8 A It went to the issue of whether the</p> <p>9 adoption of the photo identification law by the</p> <p>10 State of Virginia was adopted with an intent to</p> <p>11 discriminate against minorities in the State of</p> <p>12 Virginia.</p> <p>13 And that, of course, involves broader</p> <p>14 issues, as well, including responses. I believe I</p> <p>15 testified in response to a number of reports</p> <p>16 submitted by experts for defendants in that case.</p> <p>17 Q Are you an expert witness on legislative</p> <p>18 intent?</p> <p>19 A I have testified on legislative intent in</p> <p>20 quite a few cases.</p> <p>21 Q You consider yourself an expert on</p> <p>22 legislative intent?</p> <p>23 A I'm not sure, you know, anyone would</p> <p>24 narrowly define themselves as an expert in something</p> <p>25 that specific. But certainly my expertise in</p>	<p style="text-align: right;">44</p> <p>1 analysis of the current political situation, as</p> <p>2 well.</p> <p>3 Q Analyzing the current political situation,</p> <p>4 is that something a historian does?</p> <p>5 A It's something absolutely as a political</p> <p>6 historian, I also consider myself a political</p> <p>7 analyst.</p> <p>8 I'm a political historian of recent</p> <p>9 America. And as a political historian of recent</p> <p>10 America, I take my work right up to the present day.</p> <p>11 And my work deals with many, many contemporary</p> <p>12 issues.</p> <p>13 Q And in the Virginia case that we were just</p> <p>14 talking about, your opinion was that the voter photo</p> <p>15 identification requirement showed an intent on the</p> <p>16 part of the legislature to intentionally</p> <p>17 discriminate against racial minorities?</p> <p>18 A Yes.</p> <p>19 Q And what were the primary reasons for that</p> <p>20 conclusion?</p> <p>21 A I'm trying to distinguish Virginia at the</p> <p>22 moment from the other cases.</p> <p>23 The strong political motivation to limit</p> <p>24 voting opportunities for minorities, given recent</p> <p>25 turnout and political voting trends in the State of</p>

<p style="text-align: right;">45</p> <p>1 Virginia, the history of discrimination in Virginia, 2 the sequence of events leading to the adoption of 3 the photo voter ID law, including the control of the 4 governorship and the legislature on the part of 5 Republicans. The similarity of what was going on in 6 Virginia to what was going on in other 7 Republican-dominated states facing similar political 8 realities.</p> <p>9 The socio-economic disparities between 10 minorities and whites in Virginia. The disparities 11 in the possession of the most common forms of voter 12 photo identification in Virginia. Contemporary 13 statements made by Republican consultants. My 14 analysis of the justifications put forth by 15 political leaders for the voter -- voter photo ID 16 law.</p> <p>17 And I looked at some of the same studies, 18 like the Texas study I looked at here, provisional 19 ballot. It's based on no photo voter ID in -- in 20 Virginia. I mean, that's --</p> <p>21 Q Good memory.</p> <p>22 A Nine or ten things.</p> <p>23 Q Good memory.</p> <p>24 So did you look at whether Virginians 25 favored a voter photo ID requirement?</p>	<p style="text-align: right;">47</p> <p>1 we think they need to be justified by real, concrete 2 evidence of voter fraud and, B, we think people 3 ought to be able who can't get photo IDs, ought to 4 be able to vote by affidavit.</p> <p>5 And, in fact, North Carolina did modify 6 its photo voter ID law to have a form of affidavit 7 voting. That is, you could go to the polls. And if 8 you don't have an acceptable photo ID, you could 9 sign an affidavit of reasonable impediment, with 10 lots and lots of options, and still vote. That fit 11 what the polls were showing.</p> <p>12 Q In Virginia did African-Americans favor a 13 voter photo ID requirement?</p> <p>14 A I don't recall. It's usually fairly close 15 on African-Americans. But, again, you know, a 16 majority of African-Americans have photo voter IDs. 17 So it's not surprising. But it's always lower. 18 Support by African-Americans is always lower than 19 support for voter photo ID than whites, at least in 20 the polls that I've seen. And I've seen a lot of 21 them.</p> <p>22 Q In Virginia, then, how did you deal with 23 the issue that was suggested that legislators were 24 responding to their constituencies in enacting a 25 voter photo ID requirement?</p>
<p style="text-align: right;">46</p> <p>1 A Absolutely.</p> <p>2 Q And did they?</p> <p>3 A You find fairly universal support for 4 voter photo ID. But I've got to qualify that in a 5 number of ways.</p> <p>6 First, that's not surprising. Most people 7 have driver's licenses, for example. We are not 8 talking about something that affects 50 percent of 9 voters. We're talking about something that may 10 affect, ten, 15, five percent of voters.</p> <p>11 So for the great majority of people, sure, 12 why not support voter photo ID.</p> <p>13 But even more importantly, these polls are 14 generic. They talk generally about photo voter ID. 15 They don't talk about specifics of voter photo ID.</p> <p>16 For example, would voters actually support 17 the way in which the voter photo ID law is written 18 in Virginia or the way it's written in Wisconsin. 19 We don't have direct information on that.</p> <p>20 We also have some very interesting polling 21 data from North Carolina that I am obviously well 22 familiar with, having been in the North Carolina 23 case in which they say, yes, we support voter photo 24 ID.</p> <p>25 But, Number 1, by very large majorities,</p>	<p style="text-align: right;">48</p> <p>1 A I responded to that in several ways.</p> <p>2 First of all, in that same poll you had 3 other issues on which voters had expressed just as 4 powerful support as they had for voter photo ID, but 5 the legislature did not act upon those other 6 measures; such as the automatic re-enfranchisement 7 of felons. And, you know, it's hard to say that 8 they were responding to their constituents.</p> <p>9 Secondly, the poll occurred after the law 10 was already put into effect. So it's a little hard 11 to say something that happened after the law 12 explained it.</p> <p>13 And, in addition, as I mentioned, these 14 are generic polls. They don't necessarily comport 15 to any specific voter photo ID. And there was never 16 any demonstration in Virginia that I saw that the 17 issue mattered to voters.</p> <p>18 You know, it's one thing to say 65 percent 19 support photo identification; it's another thing to 20 say it made one bit of difference.</p> <p>21 Q Nationally, is there overwhelming support 22 for voter photo ID requirement?</p> <p>23 A Yes, there is -- you know, I don't know 24 about overwhelming, but there is certainly majority 25 support nationally.</p>



<p style="text-align: right;">49</p> <p>1 <b>Again, generically.</b></p> <p>2 Q Why don't we just get right into the</p> <p>3 expert report.</p> <p>4 A <b>Sure.</b></p> <p>5 Q The way I've put it together, there is the</p> <p>6 report and then there are two attachments. And I'm</p> <p>7 just going to consider that all one exhibit.</p> <p>8 A <b>That's fine.</b></p> <p>9 MR. KAWSKI: So this will be Exhibit 1.</p> <p>10 (Lichtman Deposition Exhibit 1 marked for</p> <p>11 identification and is attached to the transcript.)</p> <p>12 MR. SPIVA: Before you start asking</p> <p>13 questions on that, can we take a break?</p> <p>14 MR. KAWSKI: Sure.</p> <p>15 (A recess was taken.)</p> <p>16 BY MR. KAWSKI:</p> <p>17 Q So we've marked Exhibit 1, which has three</p> <p>18 parts, but really it's all one item. And it's</p> <p>19 before you, Dr. Lichtman. What is Exhibit 1?</p> <p>20 A <b>My initial report.</b></p> <p>21 Q And in this case?</p> <p>22 A <b>Oh, yes.</b></p> <p>23 Q And in addition to your report, we have</p> <p>24 Exhibit 1, which is your CV. Correct?</p> <p>25 A <b>Yes.</b></p>	<p style="text-align: right;">51</p> <p>1 <b>experts did that.</b></p> <p>2 <b>I looked at things like a voter turnout</b></p> <p>3 <b>and registration and election returns, but not</b></p> <p>4 <b>getting into the voter files.</b></p> <p>5 Q Did you look at Department of Motor</p> <p>6 Vehicles data?</p> <p>7 A <b>I'm not sure I did for the initial report,</b></p> <p>8 <b>because I didn't have it. But I think I certainly</b></p> <p>9 <b>did on the second report, when data began to come</b></p> <p>10 <b>in, and my understanding is it is still coming in.</b></p> <p>11 Q Okay. You did not conduct any surveys</p> <p>12 yourself to form your opinions in this case?</p> <p>13 A <b>I did not.</b></p> <p>14 Q And you did not review municipal-level</p> <p>15 data of voting for this case?</p> <p>16 A <b>I did, actually.</b></p> <p>17 Q You did?</p> <p>18 A <b>I think it's in my second report, though,</b></p> <p>19 <b>not in my first report.</b></p> <p>20 Q Okay. We'll get to that.</p> <p>21 What type of municipal data are we talking</p> <p>22 about?</p> <p>23 A <b>Turnout data.</b></p> <p>24 Q Okay.</p> <p>25 A <b>Because I believe Dr. Hood, I think it</b></p>
<p style="text-align: right;">50</p> <p>1 Q And Exhibit 2, which is a list of cases in</p> <p>2 which you've been involved. Correct?</p> <p>3 A <b>Yes.</b></p> <p>4 Q Okay. I just want to ask you as a general</p> <p>5 matter what data you relied upon in preparing -- or</p> <p>6 informing opinions in which you asserted in this</p> <p>7 report.</p> <p>8 A <b>Yes, I think I have a paragraph on that --</b></p> <p>9 Q Okay.</p> <p>10 A <b>-- on Page 3.</b></p> <p>11 Q Okay.</p> <p>12 A <b>I don't know if you want me to repeat it</b></p> <p>13 <b>or you want to just read it.</b></p> <p>14 Q Which paragraph?</p> <p>15 A <b>It's the last full paragraph on the bottom</b></p> <p>16 <b>of Page 3.</b></p> <p>17 Q Okay.</p> <p>18 A <b>It is a pretty broad, you know, array of</b></p> <p>19 <b>data.</b></p> <p>20 Q When -- on Page 3, where you state, "My</p> <p>21 analysis draws upon the Wisconsin Government</p> <p>22 Accountability Board's GAB database," do you mean</p> <p>23 the SVRS database?</p> <p>24 A <b>I don't think so. I don't think I went</b></p> <p>25 <b>into the individual voter files. I think other</b></p>	<p style="text-align: right;">52</p> <p>1 <b>was, had made some analyses of provisional balloting</b></p> <p>2 <b>in off-year elections. And I looked at his backup</b></p> <p>3 <b>data, and I did some research of my own on local</b></p> <p>4 <b>elections.</b></p> <p>5 Q Have you looked at provisional ballot data</p> <p>6 for the most recent two elections in Wisconsin?</p> <p>7 A <b>I've asked for it, and I did receive for,</b></p> <p>8 <b>I believe it was the 2015, some provisional ballot</b></p> <p>9 <b>data from Milwaukee.</b></p> <p>10 <b>And other than that, I've only seen</b></p> <p>11 <b>newspaper accounts. I have not received as yet</b></p> <p>12 <b>official provisional ballot data.</b></p> <p>13 <b>I would like to.</b></p> <p>14 Q So nothing for 2016.</p> <p>15 A <b>Just -- there was just a newspaper article</b></p> <p>16 <b>about it. And I also discussed it with one of the</b></p> <p>17 <b>attorneys who had talked to I believe an election</b></p> <p>18 <b>official in Madison. But I did not see actual data.</b></p> <p>19 <b>I just kind of got a report of that interview.</b></p> <p>20 Q Okay. If you do obtain the provisional</p> <p>21 ballot data for 2016, you intend to form opinions</p> <p>22 about it?</p> <p>23 A <b>Probably.</b></p> <p>24 Q Okay.</p> <p>25 A <b>I mean, I can't say, since I haven't seen</b></p>

<p style="text-align: right;">53</p> <p>1 <b>it. But most likely.</b></p> <p>2 Q Okay. In preparing for this case, did you</p> <p>3 read Wisconsin law, the statutes, administrative</p> <p>4 code?</p> <p>5 A <b>Some of it. I mean, I don't remember</b></p> <p>6 <b>exactly, but some of it.</b></p> <p>7 Q Did you read the requirements that the DMV</p> <p>8 has for obtaining ID cards?</p> <p>9 A <b>I believe there is not an official manual</b></p> <p>10 <b>that goes through the exact procedures that one has</b></p> <p>11 <b>to go through to get an ID card.</b></p> <p>12 My understanding from reading the</p> <p>13 depositions on this is that it's a discretionary</p> <p>14 matter. That there's not a manual which spells out</p> <p>15 exactly what it is you have to do to get an ID card.</p> <p>16 That there's a lot of discretion involved in the</p> <p>17 process.</p> <p>18 So to the extent, you know, I could, I</p> <p>19 read the depositions and tried to figure out the process.</p> <p>20 But I'm not surprised that it's been such a</p> <p>21 difficult and tortuous process for the individual</p> <p>22 voter.</p> <p>23 Q That confuses me. Because have you read</p> <p>24 the Wisconsin Administrative Code Chapter Trans,</p> <p>25 T-R-A-N-S, 102?</p>	<p style="text-align: right;">55</p> <p>1 A <b>Yes, I have.</b></p> <p>2 Q -- in Wisconsin?</p> <p>3 And have you seen the guides that are</p> <p>4 available on that website that give step-by-step</p> <p>5 instructions for people to obtain ID cards?</p> <p>6 A <b>Yes. And I think I reported some of that</b></p> <p>7 <b>in here. That's right.</b></p> <p>8 Q But your opinion is still that the process</p> <p>9 is confusing?</p> <p>10 A <b>I think the process is confusing, from</b></p> <p>11 <b>what I've read in the depositions. And there -- I</b></p> <p>12 <b>understand there are a bunch more depositions, which</b></p> <p>13 <b>may clarify things for me or not, which I will look</b></p> <p>14 <b>at, from DMV officials.</b></p> <p>15 But my understanding is there is a lot of</p> <p>16 discretion involved in this process.</p> <p>17 Q You understand, though, that process in</p> <p>18 which there is discretion that is the subject of the</p> <p>19 depositions does not apply to the hundreds and</p> <p>20 hundreds of thousands of people that have obtained a</p> <p>21 free ID card? You do understand that. Correct?</p> <p>22 MR. SPIVA: Objection to form.</p> <p>23 But you can answer.</p> <p>24 A <b>Yeah, I'm not sure the hundreds of</b></p> <p>25 <b>thousands of people that you're referring to.</b></p>
<p style="text-align: right;">54</p> <p>1 A <b>I don't recall that. I do recall reading</b></p> <p>2 <b>administrative codes. And I think I even put that</b></p> <p>3 <b>down in my report of what it takes to get a free</b></p> <p>4 <b>photo voter ID.</b></p> <p>5 But reading the depositions indicated to</p> <p>6 me that this is not a cut-and-dried process. That</p> <p>7 there is a lot of discretion and a lot of</p> <p>8 uncertainty, which is also what I found in reading</p> <p>9 the individual records.</p> <p>10 So it's not as if one could just look at</p> <p>11 some manual and say, Oh, I know exactly, you know,</p> <p>12 what it takes to get a photo ID card in Wisconsin.</p> <p>13 Q So you understand that the depositions</p> <p>14 you're reading are about the extraordinary proof ID</p> <p>15 petition process. Correct?</p> <p>16 A <b>Correct.</b></p> <p>17 Q And that that process has only been used</p> <p>18 by approximately 12 to 13 hundred individuals?</p> <p>19 A <b>That's correct. Although I'm not sure the</b></p> <p>20 <b>depositions were entirely limited to that.</b></p> <p>21 Q You realize --</p> <p>22 A <b>I think they talked about more broadly the</b></p> <p>23 <b>entire process for obtaining a free photo voter ID</b></p> <p>24 <b>card.</b></p> <p>25 Q Have you looked at the DMV's website --</p>	<p style="text-align: right;">56</p> <p>1 But I'm not convinced there's no</p> <p>2 discretion in the process at all, given from what</p> <p>3 I've read in the depositions there does seem to be</p> <p>4 some discretion. And again, there's a whole bunch</p> <p>5 more depositions which may clarify this for me.</p> <p>6 But, you know, I am a political historian.</p> <p>7 I know how these things work. And things may look</p> <p>8 cut and dry but they're often not, because you're</p> <p>9 dealing with human beings.</p> <p>10 Q So what are the requirements to obtain a</p> <p>11 driver license in Wisconsin?</p> <p>12 A <b>Well, you've got to have proof of</b></p> <p>13 <b>identity, proof of citizenship or permanent legal</b></p> <p>14 <b>status in the State of Wisconsin. I believe you've</b></p> <p>15 <b>got to pass a driver's test, and I think there's a</b></p> <p>16 <b>questionnaire about having medical conditions that</b></p> <p>17 <b>might disqualify you from getting a driver's</b></p> <p>18 <b>license.</b></p> <p>19 Q What about proof of identity?</p> <p>20 A <b>I think I mentioned that. If I didn't, I</b></p> <p>21 <b>meant to.</b></p> <p>22 Q What about proof of residence?</p> <p>23 MR. SPIVA: Objection. Asked and</p> <p>24 answered.</p> <p>25 You can answer.</p>

<p style="text-align: right;">57</p> <p>1 <b>A I think I mentioned that, too, yeah.</b></p> <p>2 <b>Q So is it your position that the Wisconsin</b></p> <p>3 <b>administrative code does not set forth the</b></p> <p>4 <b>requirements for obtaining a driver license or a</b></p> <p>5 <b>state ID card?</b></p> <p>6 <b>A I didn't say -- I didn't say it didn't. I</b></p> <p>7 <b>said it did. It's just in terms of the free ID</b></p> <p>8 <b>card, from my reading of the depositions, it did</b></p> <p>9 <b>seem like there was a lot of discretion involved in</b></p> <p>10 <b>that process. Certainly in the IDPP process, no</b></p> <p>11 <b>doubt about that.</b></p> <p>12 <b>Now, the depositions were not in my mind</b></p> <p>13 <b>entirely clear about how much discretion there was</b></p> <p>14 <b>in the entire process, and maybe that will become</b></p> <p>15 <b>clearer when I read the new depositions.</b></p> <p>16 <b>Q Okay. When did the voter photo ID law go</b></p> <p>17 <b>into effect in Wisconsin?</b></p> <p>18 <b>A I believe it is in effect, went into</b></p> <p>19 <b>effect for the 2016 primaries and was in effect for</b></p> <p>20 <b>an off-year election, as well. I don't think any</b></p> <p>21 <b>general, you know, major general election like a</b></p> <p>22 <b>midterm or a presidential year has yet experienced</b></p> <p>23 <b>the photo ID requirement.</b></p> <p>24 <b>Q Since the time that the voter photo ID law</b></p> <p>25 <b>was enacted in Wisconsin, how many free ID cards for</b></p>	<p style="text-align: right;">59</p> <p>1 <b>Q Is it fair to say it's hundreds of</b></p> <p>2 <b>thousands?</b></p> <p>3 <b>A It could be. But I'm not sure it's large</b></p> <p>4 <b>hundreds of thousands. Again, because of some of</b></p> <p>5 <b>these issues of duplicates and renewals.</b></p> <p>6 <b>Q In Virginia did they have a free photo ID</b></p> <p>7 <b>program for voters?</b></p> <p>8 <b>A Yes. And it was very different from the</b></p> <p>9 <b>program in Wisconsin.</b></p> <p>10 <b>Q How many IDs were issued --</b></p> <p>11 <b>A Let me finish.</b></p> <p>12 <b>Q Go ahead. Go ahead.</b></p> <p>13 <b>A I was about to explain what the Virginia</b></p> <p>14 <b>free voter ID doesn't have all of the identification</b></p> <p>15 <b>requirements that Wisconsin does that has forced at</b></p> <p>16 <b>least 1300 people to go into the IDPP.</b></p> <p>17 <b>And, by the way, that does not</b></p> <p>18 <b>necessarily -- that number is not necessarily</b></p> <p>19 <b>indicative of those who tried to get a photo ID for</b></p> <p>20 <b>voting and couldn't. Not everyone who couldn't get</b></p> <p>21 <b>it otherwise necessarily is going to subject</b></p> <p>22 <b>themselves to another process.</b></p> <p>23 <b>I don't know how many -- there's no way of</b></p> <p>24 <b>knowing how many did not. But the 1300 is a minimal</b></p> <p>25 <b>number. But in Virginia it's very different.</b></p>
<p style="text-align: right;">58</p> <p>1 the purposes of voting has Wisconsin issued?</p> <p>2 <b>A It's very unclear because of those who may</b></p> <p>3 <b>not need free IDs for voting might check that box</b></p> <p>4 <b>because, hey, I can get it for free, rather than</b></p> <p>5 <b>paying a fee.</b></p> <p>6 <b>But I do know, I did see the analysis of</b></p> <p>7 <b>that by your expert, Dr. Hood, which was fraught</b></p> <p>8 <b>with error.</b></p> <p>9 <b>Q How many IDs? That was my question.</b></p> <p>10 <b>A How many -- I don't understand your</b></p> <p>11 <b>question because are you talking about generally the</b></p> <p>12 <b>DMV issues nondriver's IDs, which could be used for</b></p> <p>13 <b>voting or not. So I'm not sure what specifically</b></p> <p>14 <b>you're asking me.</b></p> <p>15 <b>Also, a lot of the IDs that are issued by</b></p> <p>16 <b>the DMV are not brand-new IDs; they're duplicates</b></p> <p>17 <b>and renewals.</b></p> <p>18 <b>Q So my question, then, to clarify, is, what</b></p> <p>19 <b>is your understanding of how many people checked the</b></p> <p>20 <b>box to get a free ID card for purposes of voting</b></p> <p>21 <b>from the Wisconsin DMV since July 2011?</b></p> <p>22 <b>MR. SPIVA: Objection to form.</b></p> <p>23 <b>A I think I have those numbers in my</b></p> <p>24 <b>rebuttal report. I would rather not repeat them</b></p> <p>25 <b>from memory.</b></p>	<p style="text-align: right;">60</p> <p>1 <b>Virginia has an affidavit requirement. You simply</b></p> <p>2 <b>have to go to a state office and, if you're already</b></p> <p>3 <b>on the voting rolls, simply affirm your identity.</b></p> <p>4 <b>Which is what Virginia used to have, but</b></p> <p>5 <b>it had it right at the polls. So what they've done</b></p> <p>6 <b>is create two more steps for the voters. And the</b></p> <p>7 <b>state, as far as I can see, was unable to show any</b></p> <p>8 <b>issues with the affirmation process that -- you</b></p> <p>9 <b>know, that led to any kind of voter fraud.</b></p> <p>10 <b>Q How many free ID cards were issued for</b></p> <p>11 <b>voting in Virginia?</b></p> <p>12 <b>A I don't recall. I would have to review my</b></p> <p>13 <b>report. I'm sorry.</b></p> <p>14 <b>Q Does 800 sound about correct?</b></p> <p>15 <b>MR. SPIVA: Objection.</b></p> <p>16 <b>A I just don't recall. I would have to</b></p> <p>17 <b>look.</b></p> <p>18 <b>Q So you have no idea at all, you couldn't</b></p> <p>19 <b>estimate?</b></p> <p>20 <b>MR. SPIVA: Objection. Calls for</b></p> <p>21 <b>speculation.</b></p> <p>22 <b>A There have been a lot of cases that I've</b></p> <p>23 <b>been working on and, you know --</b></p> <p>24 <b>Q Sure there are.</b></p> <p>25 <b>A -- without reviewing my report I don't</b></p>

<p style="text-align: right;">61</p> <p>1 want to speculate.</p> <p>2 Q Okay. I don't want you to speculate.</p> <p>3 What is early voting?</p> <p>4 A Early voting is voting prior to election</p> <p>5 day.</p> <p>6 Q Does Wisconsin have early voting?</p> <p>7 A You can vote early in Wisconsin through a</p> <p>8 no-excuse early absentee ballot. That's correct.</p> <p>9 Q But is it truly early voting?</p> <p>10 A I don't know what you mean by "truly early</p> <p>11 voting." Lots and lots of voters in Wisconsin</p> <p>12 manage to vote early. It's not one or two percent;</p> <p>13 it's much larger than that.</p> <p>14 Q Do their ballots count when they vote in</p> <p>15 person absentee? Are they counted on the day they</p> <p>16 vote in person absentee?</p> <p>17 A I don't understand the question. Are</p> <p>18 there -- are their ballots counted with respect to</p> <p>19 the election? Yes.</p> <p>20 Q So the votes are tabulated on the day that</p> <p>21 they in person absentee vote?</p> <p>22 A I didn't say that.</p> <p>23 Q Okay. What did you say?</p> <p>24 A I said their votes are counted as part of</p> <p>25 the tabulation for the election results. I didn't</p>	<p style="text-align: right;">63</p> <p>1 limit opportunities for minorities to vote,</p> <p>2 particularly Hispanics and African-Americans, and</p> <p>3 register in the State of Wisconsin.</p> <p>4 And that, of course, leads to examination</p> <p>5 of lots of other things, such as disparities in</p> <p>6 socio-economics, disparities in possession of common</p> <p>7 forms of identification, as well as many other</p> <p>8 issues that I address in my two reports.</p> <p>9 In addition, I was asked to respond to any</p> <p>10 material presented by the state or by experts for</p> <p>11 the state or other witnesses for the state. And as</p> <p>12 I said, that's been a -- very much of an ongoing</p> <p>13 process, given that data is still coming in.</p> <p>14 Q You are not providing an expert opinion on</p> <p>15 the number of voters who lack a form of qualifying</p> <p>16 ID in Wisconsin. Correct?</p> <p>17 A That's correct.</p> <p>18 Q And you are not providing an expert</p> <p>19 opinion regarding the turnout rates for any election</p> <p>20 in Wisconsin. Correct?</p> <p>21 MR. SPIVA: Objection to form.</p> <p>22 A That's not true. I think I do -- I do</p> <p>23 examine turnout.</p> <p>24 Q Okay. Are you providing an expert opinion</p> <p>25 regarding the state's interests that support the</p>
<p style="text-align: right;">62</p> <p>1 say what day their votes were tabulated.</p> <p>2 Q So if a voter votes in person absentee, is</p> <p>3 it guaranteed that their vote will be tabulated?</p> <p>4 A Well, it's never guaranteed that anyone's</p> <p>5 vote will be tabulated. We know there are always</p> <p>6 errors and mistakes. But your vote certainly should</p> <p>7 be tabulated, barring some error or mistake.</p> <p>8 Q What type of error or mistake with an</p> <p>9 absentee ballot could result in it not being</p> <p>10 tabulated in Wisconsin?</p> <p>11 A I'm not sure I know all of the details.</p> <p>12 But, you know, if you don't sign a ballot, that</p> <p>13 might be one reason why a ballot might not be</p> <p>14 tabulated.</p> <p>15 Q So what are the topics that you're giving</p> <p>16 an expert opinion on in this case? Just the general</p> <p>17 topics.</p> <p>18 A Yeah. I think I already mentioned my</p> <p>19 report. You know, again, it's laid out here, but</p> <p>20 I'll say it again.</p> <p>21 My report is looking at the intent behind</p> <p>22 not just the adoption of voter ID, but a host of</p> <p>23 measures adopted with respect to voting and</p> <p>24 registration between 2011 and 2014. Looking at</p> <p>25 whether this panoply of changes had the intent to</p>	<p style="text-align: right;">64</p> <p>1 challenge laws?</p> <p>2 A Yes.</p> <p>3 Q Are you providing an expert opinion</p> <p>4 regarding whether voter photo ID laws deter people</p> <p>5 from voting?</p> <p>6 A Yes.</p> <p>7 Q Are you providing an expert opinion</p> <p>8 regarding whether voter photo ID laws will deter</p> <p>9 voter fraud?</p> <p>10 A Yes.</p> <p>11 Q Okay. And where is that in your expert</p> <p>12 report?</p> <p>13 A I have to find it. But I do talk about</p> <p>14 voter fraud in my expert report. And I talk about</p> <p>15 it fairly extensively.</p> <p>16 Q Okay.</p> <p>17 A I talk about the fact that -- I think it's</p> <p>18 on Page 20 through 22.</p> <p>19 Q Okay.</p> <p>20 A And if you want me to recount it, I will</p> <p>21 recount it for you.</p> <p>22 Q Not necessary.</p> <p>23 Are you providing an opinion -- an expert</p> <p>24 opinion regarding whether minority voter turnout</p> <p>25 increased in Wisconsin from 2010 to 2014?</p>

<p style="text-align: right;">65</p> <p>1 <b>A Only insofar as that might be responsive</b>  2 <b>to analyses that I've looked at by experts for</b>  3 <b>defendants. So I believe I am.</b>  4 <b>Q Okay. Are you providing an opinion</b>  5 <b>regarding whether minorities used in-person absentee</b>  6 <b>voting at a higher rate in 2014 than in 2010?</b>  7 <b>A I don't believe I looked directly at</b>  8 <b>minorities, but I did look at, because it was</b>  9 <b>highlighted by one of your experts, use of early</b>  10 <b>voting, changes over time in Madison and Milwaukee,</b>  11 <b>the two cities that have the bulk of the minority</b>  12 <b>population. Certainly the African-American</b>  13 <b>population, the bulk of, about two thirds, and a</b>  14 <b>very substantial component of the Hispanic</b>  15 <b>population, as well.</b>  16 <b>So that certainly bears on that,</b>  17 <b>particularly since your experts highlighted that as</b>  18 <b>one of the ways in which you can gain insight into</b>  19 <b>its effect on minorities.</b>  20 <b>Q Have you read Dr. Burden's and Dr. Mayor's</b>  21 <b>reports in this case?</b>  22 <b>A Some time ago I believe I did.</b>  23 <b>Q Are there any inconsistencies between your</b>  24 <b>report and their reports?</b>  25 <b>A I mean, I would have to go over it again</b></p>	<p style="text-align: right;">67</p> <p>1 <b>Supreme Court. That's on Page 3 of my report. In</b>  2 <b>which, in addition to direct evidence, it focuses on</b>  3 <b>a set of other pieces of evidence that directly bear</b>  4 <b>upon ascertaining intentional discrimination,</b>  5 <b>discriminatory impact, historical background,</b>  6 <b>sequence of events, procedural or substantive</b>  7 <b>deviations, and the direct evidence contemporaneous</b>  8 <b>viewpoints expressed by decision-makers.</b>  9 <b>And I also note, of course, that in this</b>  10 <b>day and age you're not going to have decision-makers</b>  11 <b>explicitly saying, By golly, you know, we're doing</b>  12 <b>this to limit minority voting because that helps</b>  13 <b>Republicans. Although, by golly, it has come as</b>  14 <b>close as I've ever seen here in Wisconsin.</b>  15 <b>Q So the Arlington Heights, these relevant</b>  16 <b>factors that you point to on Pages 3 and 4, how do</b>  17 <b>they work? Is it a checklist that you must meet</b>  18 <b>each of the five?</b>  19 <b>A Oh, no. They're guidelines. No such</b>  20 <b>thing as a checklist, where you, you know, have to</b>  21 <b>meet every single thing.</b>  22 <b>You know, if we had ten statements from</b>  23 <b>legislators, from all the legislative leaders</b>  24 <b>saying, Yeah, you know, we were behind this because</b>  25 <b>we wanted to limit minority voting because that gave</b></p>
<p style="text-align: right;">66</p> <p>1 <b>in detail. I wasn't looking at it for that. But</b>  2 <b>nothing leaped out at me when I looked at it.</b>  3 <b>Q Okay. All right. Let's look at Page 1.</b>  4 <b>I just want to talk about some language there that</b>  5 <b>you emphasized on Page 1 first.</b>  6 <b>In the first full paragraph, you see the</b>  7 <b>word "intent" is in italics?</b>  8 <b>A Yes.</b>  9 <b>Q "Intent to discriminate." What do you</b>  10 <b>mean by the word "intent"? What does that mean to</b>  11 <b>you?</b>  12 <b>A Intent refers to the motivation behind any</b>  13 <b>particular legislation or, for that matter, as a</b>  14 <b>historian you look at the intent behind any given</b>  15 <b>decision.</b>  16 <b>And so the intent is the motivation, the</b>  17 <b>reasons behind why legislation was adopted or why a</b>  18 <b>particular decision was made.</b>  19 <b>Q And does the intent in your mind have to</b>  20 <b>be shown through direct evidence, through something</b>  21 <b>less than direct evidence? What is necessary to</b>  22 <b>show intent the way you define it?</b>  23 <b>A Yeah, I think I lay that out in my report,</b>  24 <b>as well. Indicating that I follow the guidelines of</b>  25 <b>the Arlington Heights decision by the United States</b></p>	<p style="text-align: right;">68</p> <p>1 <b>us political advantage, we wouldn't necessarily have</b>  2 <b>to go through the other factors.</b>  3 <b>So it's nothing that mechanical. But, in</b>  4 <b>fact, I do consider every one of these factors in</b>  5 <b>my -- in my report.</b>  6 <b>Q How are the factors to be utilized? Is it</b>  7 <b>a balancing test?</b>  8 <b>A No. It's a narrative test. It's a test</b>  9 <b>of how the factors come together to give your</b>  10 <b>opinion.</b>  11 <b>Some of them do involve balancing. For</b>  12 <b>example, looking at the justifications for the law.</b>  13 <b>You would balance that against the realities.</b>  14 <b>So if they're saying, for example, By</b>  15 <b>golly, you know, we are adopting this law because</b>  16 <b>there is rampant fraud, because there's lots of</b>  17 <b>voter impersonation in the State of Wisconsin, then</b>  18 <b>you look at the reality and you see there</b>  19 <b>essentially isn't any at all, that would -- that</b>  20 <b>kind of balance would enter into your analysis.</b>  21 <b>Q Which of the five factors involves the</b>  22 <b>justifications for the law?</b>  23 <b>A Contemporaneous viewpoints expressed by</b>  24 <b>decision-makers. Those contemporaneous viewpoints</b>  25 <b>indicate the kinds of justifications that</b></p>



<p style="text-align: right;">69</p> <p>1 decision-makers have put forth in their contentions</p> <p>2 in support of the law.</p> <p>3 Q And so if I read the Arlington Heights</p> <p>4 case, that's what the Supreme Court was talking</p> <p>5 about?</p> <p>6 MR. SPIVA: Objection. Calls for a legal</p> <p>7 conclusion.</p> <p>8 A I don't understand the question anyway.</p> <p>9 Arlington Heights is talking about lots and lots of</p> <p>10 things that it asks you to look at. It never said</p> <p>11 this was exhaustive or complete or, you know,</p> <p>12 necessarily the only way to look at it.</p> <p>13 But, you know, I've adopted this. And</p> <p>14 more broadly, of course, I've applied my expertise</p> <p>15 as an historian. As a historian, this is the kind</p> <p>16 of thing we do all the time.</p> <p>17 If you shut off motivation and intent from</p> <p>18 the writing of history, you cut out a huge swath of</p> <p>19 historical scholarship. This is the kind of thing</p> <p>20 that historians do all of the time.</p> <p>21 Q Are you an expert on intentional racial</p> <p>22 discrimination?</p> <p>23 A You asked me a similar question before,</p> <p>24 and I'll give you a similar answer.</p> <p>25 You know, that's too narrow a kind of</p>	<p style="text-align: right;">71</p> <p>1 A Other scholars look at your work.</p> <p>2 Q That's all it means?</p> <p>3 A That's what peer-reviewed means. It is</p> <p>4 evaluation of your scholarship by other scholars in</p> <p>5 the field.</p> <p>6 Now, you can be more specific, but</p> <p>7 generically that's what peer-reviewed means.</p> <p>8 Q What other peer-reviewed scholarship have</p> <p>9 you done on the issue of intentional racial</p> <p>10 discrimination?</p> <p>11 A I would have to think about it. Yes.</p> <p>12 Early on I did an article in the Journal of Negro</p> <p>13 History, a peer-reviewed publication, that dealt</p> <p>14 with the issue of intentional voter discrimination.</p> <p>15 Q Perhaps it would help --</p> <p>16 A And I believe I published a book chapter</p> <p>17 that dealt with that, as well.</p> <p>18 Q Would it help to look at Exhibit 1, your</p> <p>19 CV?</p> <p>20 A If you want to.</p> <p>21 Q Let's look at it.</p> <p>22 So I know this is kind of long.</p> <p>23 A Yes, it is.</p> <p>24 Q There's a lot to remember.</p> <p>25 A Yes.</p>
<p style="text-align: right;">70</p> <p>1 expertise. I'm an expert in political history. I'm</p> <p>2 an expert in political analysis. I'm an expert in</p> <p>3 quantitative analysis. I'm an expert in voting and</p> <p>4 civil rights, which gives me the expertise to opine</p> <p>5 on that particular subject matter.</p> <p>6 Q What scholarship have you done on that</p> <p>7 subject matter?</p> <p>8 A What subject matter?</p> <p>9 Q Intentional racial discrimination.</p> <p>10 A Certainly my book on the rise of the</p> <p>11 American conservative movement deals extensively</p> <p>12 with the issue of intentional racial discrimination.</p> <p>13 So that would be one example of scholarship that</p> <p>14 addresses that issue fairly extensively.</p> <p>15 Q Is that a peer-reviewed publication?</p> <p>16 A It's an award-winning book. It's not an</p> <p>17 article. It's much bigger, more ambitious book.</p> <p>18 And it was a finalist for the National Book Critics</p> <p>19 Circle Award in general nonfiction. That's every</p> <p>20 nonfiction book published in the United States.</p> <p>21 Q Is that peer-reviewed scholarship?</p> <p>22 A Absolutely. The -- it never would have</p> <p>23 gotten accepted if it wasn't peer-reviewed in the</p> <p>24 first place.</p> <p>25 Q What does peer-reviewed mean?</p>	<p style="text-align: right;">72</p> <p>1 Q Could you point me to the examples of</p> <p>2 peer-reviewed scholarship in your CV that deal with</p> <p>3 the issue of intentional racial discrimination?</p> <p>4 A Yes.</p> <p>5 Q Okay.</p> <p>6 A We already talked about my book, White</p> <p>7 Protestant Nation, the Rise of the American</p> <p>8 Conservative Movement.</p> <p>9 Q Uh-huh.</p> <p>10 A We talked about my article in the Journal</p> <p>11 of Negro History.</p> <p>12 Q And which page is that on in this?</p> <p>13 A The first -- the first page under</p> <p>14 Scholarly Articles. There doesn't seem to be page</p> <p>15 numbers. Oh, Page 5. There it is.</p> <p>16 Q You're talking about the October 1969</p> <p>17 article?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 A That directly dealt with that topic.</p> <p>21 To some extent I dealt with it in my book,</p> <p>22 another book, Prejudice in the Old Politics.</p> <p>23 Q Okay.</p> <p>24 A Presidential election of 1928.</p> <p>25 I don't remember this article, to be</p>

<p style="text-align: right;">73</p> <p>1 honest with you. It was a long time ago.</p> <p>2 <b>Discriminatory Election Systems and the Political</b></p> <p>3 <b>Cohesion Doctrine obviously dealt with racial</b></p> <p>4 <b>discrimination.</b></p> <p>5 Q Let me stop you there.</p> <p>6 A Let me finish. I don't recall if that</p> <p>7 article dealt with the issue of intent or not, and</p> <p>8 it may have.</p> <p>9 Q And I'm talking about only peer-reviewed</p> <p>10 journals. Is that one peer-reviewed?</p> <p>11 MR. SPIVA: Objection. That's a different</p> <p>12 question than you asked.</p> <p>13 A Yeah, I'm not sure what you mean. But I</p> <p>14 don't believe so.</p> <p>15 Q Okay.</p> <p>16 A Again, I don't recall all the details of</p> <p>17 all of these articles. The article in the Journal</p> <p>18 of Law and Politics on black/white voter</p> <p>19 registration disparities, I don't remember if that</p> <p>20 dealt with intentional discrimination or not. It</p> <p>21 may have.</p> <p>22 That wasn't the focus of it. Obviously</p> <p>23 the focus of it was documenting registration</p> <p>24 disparities. But, obviously, there was a reason</p> <p>25 behind these registration disparities that had to do</p>	<p style="text-align: right;">75</p> <p>1 So it's both articles and books.</p> <p>2 Q Do you sit on the editorial boards of any</p> <p>3 journals?</p> <p>4 A No. I don't have time for that.</p> <p>5 Q Have you ever?</p> <p>6 A Yeah, I was once on the editorial board of</p> <p>7 the International Journal of Information Systems.</p> <p>8 But I really didn't do much, because I didn't have</p> <p>9 time. They wanted me to be a -- one of the editors.</p> <p>10 And I said you can use my name, but, you know, I'm</p> <p>11 really not going to be able to get involved in this</p> <p>12 because I don't have time.</p> <p>13 Q So you didn't -- did you peer-review any</p> <p>14 articles?</p> <p>15 A I have peer-reviewed articles, absolutely,</p> <p>16 for journals.</p> <p>17 Q Okay. But those four or five, again</p> <p>18 peer-reviewed scholarship --</p> <p>19 A Right.</p> <p>20 Q -- including books, those four or five are</p> <p>21 the only examples?</p> <p>22 A The only ones I can come up with at the</p> <p>23 moment.</p> <p>24 As I told you, other scholarship may well</p> <p>25 have addressed that issue even though it was not</p>
<p style="text-align: right;">74</p> <p>1 with intentional discrimination in the State of</p> <p>2 Mississippi, particularly the vestiges of the dual</p> <p>3 registration system.</p> <p>4 There may have been some discussion of it</p> <p>5 in other articles and books, but I don't see</p> <p>6 anything directly on it other than the things I've</p> <p>7 already highlighted for you.</p> <p>8 Q So just so I'm clear on the question I</p> <p>9 asked, in this 21-page Exhibit 1, I've asked you to</p> <p>10 point me to the peer-reviewed scholarship about the</p> <p>11 topic of intentional racial discrimination.</p> <p>12 Correct?</p> <p>13 A Yes.</p> <p>14 Q And you've pointed me to four, maybe five</p> <p>15 examples.</p> <p>16 A That's about right.</p> <p>17 Q All of those are peer-reviewed journals?</p> <p>18 A Now you've changed your question again.</p> <p>19 First you said peer-reviewed scholarship,</p> <p>20 now you said peer-reviewed journals. Books get</p> <p>21 peer-reviewed, you have to understand, or they</p> <p>22 wouldn't get published. And probably peer-reviewed</p> <p>23 even more extensively than articles, because there</p> <p>24 is a big commitment that a publisher has to make to</p> <p>25 publishing a book.</p>	<p style="text-align: right;">76</p> <p>1 directly on the issue.</p> <p>2 Q Okay. What other qualifications do you</p> <p>3 have to give an expert opinion on intentional racial</p> <p>4 discrimination?</p> <p>5 MR. SPIVA: Objection. Other than what --</p> <p>6 MR. KAWSKI: Other than what he just</p> <p>7 defined.</p> <p>8 A I've already gone over a lot of this. As</p> <p>9 I said, I've been a practicing historian for 43</p> <p>10 years. I have published, depending on how you</p> <p>11 count, anywhere from seven to nine books, scores of</p> <p>12 articles. I've won major national awards. And this</p> <p>13 is what historians do. Historians assess and weigh</p> <p>14 the intent behind -- as a political historian,</p> <p>15 political acts and political decisions.</p> <p>16 Not to mention, of course, my experience</p> <p>17 in voting rights. Extensive experience in voting</p> <p>18 rights, as well as scholarship on voting rights and</p> <p>19 civil rights.</p> <p>20 Q Have your expert opinions been subject to</p> <p>21 any challenges in cases? And I mean challenges to</p> <p>22 have them excluded.</p> <p>23 A Out of 85 cases, one failed.</p> <p>24 Q And what was that?</p> <p>25 A It was in I think the Jublieer political</p>

<p style="text-align: right;">77</p> <p>1 gerrymandering case, when I was challenged about  2 opinions on political gerrymandering. And I  3 remember I was driving back from the hearing, and  4 that quickly the judge rejected the challenge. It  5 is the only time I have ever been challenged in, you  6 know, 85-plus cases. And as I said, it was quickly  7 dismissed.</p> <p>8 Q So no one has filed a motion to exclude,  9 as far as you know --</p> <p>10 A Oh, they filed motions to exclude.  11 Absolutely. But, I mean, I don't know the details  12 of those motions. I'm not a lawyer.</p> <p>13 But I'm not aware of ever my testimony  14 being excluded.</p> <p>15 Q Okay.</p> <p>16 A And those exclusion motions, as I  17 understand them, don't have anything to do with my  18 expertise. They have to do with legal issues.</p> <p>19 Q Okay. Page 4.</p> <p>20 A Where are we on the -- still on the CV?</p> <p>21 Q No. Off the CV, back to the report.</p> <p>22 A We're off the CV. What are we on now?</p> <p>23 MR. SPIVA: Off the record.  24 (A discussion was held off the record.)  25 BY MR. KAWSKI:</p>	<p style="text-align: right;">79</p> <p>1 treatment when it came to voting. You had to  2 actually pass a referendum to even enable  3 African-Americans to vote in the State of Wisconsin.  4 There was the 5,000 rule, that only those  5 with -- in municipalities of 5,000 or more had to  6 register, which obviously had a direct  7 discriminatory burden on African-Americans, who  8 tended to live in more urban communities.</p> <p>9 The history of school segregation that was  10 not resolved in the major city until decades after  11 the Brown vs. Board of Education. The lack of  12 Spanish-language ballots in the State of Wisconsin  13 that required justice department intervention.</p> <p>14 Those are some examples of official  15 discrimination.</p> <p>16 Q Do you have any others?</p> <p>17 A Well, these are just off the top of my  18 head. As I said, I derived these from the Burden  19 report. I'm not saying those are exclusive, but  20 those are the four or five examples that come to  21 mind.</p> <p>22 Q With regard to the ballots, is that a  23 state issue? When I say "state," I mean State of  24 Wisconsin issue.</p> <p>25 A Regard to what ballots?</p>
<p style="text-align: right;">78</p> <p>1 Q Looking at Page 4 of the report. You have  2 a statement, "Wisconsin has a history of  3 discrimination against African-Americans and  4 Hispanics that is reflected in current racial  5 disparities," and it goes on.</p> <p>6 Do you see that?</p> <p>7 A Yeah.</p> <p>8 Q When you say "Wisconsin has a history,"  9 are you talking about official state-sponsored  10 discrimination?</p> <p>11 A There is certainly, that is an element of  12 it, yes.</p> <p>13 Q Okay. What --</p> <p>14 A Not the only element.</p> <p>15 Q What are the aspects of that  16 state-sponsored discrimination that you're  17 highlighting in your opinion?</p> <p>18 A Well, as I said, this was something that I  19 derived from Professor Burden, who was directly  20 addressing the issue of the history of  21 discrimination.</p> <p>22 But off the top of my head, I can mention  23 some of the things that historically involved  24 official state action. Such as, back in the 19th  25 century, singling out African-Americans for special</p>	<p style="text-align: right;">80</p> <p>1 Q The Spanish-language ballots issue you  2 just mentioned. Is that --</p> <p>3 A Well, it's primarily a local issue. But  4 certainly the state could have, you know, taken  5 action. And local bodies are, you know, part of the  6 state.</p> <p>7 Q What about the segregation issue; is that  8 a state issue?</p> <p>9 A Again, that is, I believe, an issue within  10 the City of Milwaukee. But certainly the state is  11 involved and implicated in this -- in this as well.</p> <p>12 Q And how so?</p> <p>13 A State certainly could have taken action to  14 deal with segregation within the City of Milwaukee.  15 We've seen states intervene in many, many ways in  16 educational local systems. But the state did  17 nothing.</p> <p>18 Q Was that an example of intentional racial  19 discrimination on the part of the state?</p> <p>20 A I didn't get into, on these historical  21 examples, whether the discrimination was intentional  22 or not. I was simply looking at whether there was,  23 in fact, a history of discrimination.</p> <p>24 So that was not something that, you know,  25 I specifically looked at.</p>

<p style="text-align: right;">81</p> <p>1 Q What about the ballots? Again, was that</p> <p>2 an example of intentional racial discrimination on</p> <p>3 the part of the State of Wisconsin?</p> <p>4 A Same answer. I did not go behind these</p> <p>5 actions to determine whether they were intentional</p> <p>6 or not. But things are rarely done by accident.</p> <p>7 And my experience as an analyst is that</p> <p>8 decision-makers understand the implications of</p> <p>9 their -- you could not miss the fact that the 5,000</p> <p>10 rule had a disparate impact upon minorities in</p> <p>11 Wisconsin. And, obviously, the 19th century</p> <p>12 provisions regarding voting were clearly</p> <p>13 intentional.</p> <p>14 Q And how does that compare to a state like</p> <p>15 Virginia in terms of examples of state-sponsored</p> <p>16 official discrimination?</p> <p>17 A I didn't do a -- as I said, I didn't even</p> <p>18 do this analysis for Wisconsin. I derived it</p> <p>19 primarily from the Burden report.</p> <p>20 So what I've conveyed to you is my memory</p> <p>21 of what I read in the Burden report. But I am also</p> <p>22 generally familiar with these histories.</p> <p>23 It's a different situation. It's not a</p> <p>24 southern state. And I have not gone down and done a</p> <p>25 line-by-line comparison of Virginia and Wisconsin.</p>	<p style="text-align: right;">83</p> <p>1 But when you have things such as</p> <p>2 segregated education systems, segregated housing</p> <p>3 that separates minorities and whites, that is going</p> <p>4 to have an implication on factors such as income,</p> <p>5 education, health, and other standard socio-economic</p> <p>6 measures.</p> <p>7 Q What have the defendants in this case -- I</p> <p>8 mean, if you know who they are, what have they done</p> <p>9 that has been an example of official state-sponsored</p> <p>10 discrimination?</p> <p>11 A I'm not sure who the defendants are</p> <p>12 exactly, so I can't answer your question.</p> <p>13 Q Well, I mean, the defendants are the</p> <p>14 individual members of the Government Accountability</p> <p>15 Board, and then the Secretary of the Department of</p> <p>16 Transportation, and the administrator of the</p> <p>17 Division of Motor Vehicles of the Department of</p> <p>18 Transportation.</p> <p>19 So what have those individuals done?</p> <p>20 A Well, if you're talking about the</p> <p>21 administrator of the Department of Transportation, I</p> <p>22 think they have, in fact, engaged in discriminatory</p> <p>23 practices.</p> <p>24 Q Racially discriminatory practices?</p> <p>25 A Racially discriminatory practices.</p>
<p style="text-align: right;">82</p> <p>1 And you probably wouldn't, because, you know, the</p> <p>2 histories are so different.</p> <p>3 Q So would Virginia, in your estimation,</p> <p>4 have more specific examples of state-sponsored</p> <p>5 discrimination, racial discrimination?</p> <p>6 A If you went back --</p> <p>7 MR. SPIVA: Just one second.</p> <p>8 Objection to form.</p> <p>9 You can answer.</p> <p>10 A Probably if you went back historically,</p> <p>11 they would.</p> <p>12 Q Okay. Now, you talk about it in the same</p> <p>13 paragraph where you mention Wisconsin has a history</p> <p>14 of discrimination that is reflected in current</p> <p>15 racial disparities on such socio-economic measures</p> <p>16 as income, unemployment, poverty, education,</p> <p>17 housing, the availability of vehicles and</p> <p>18 telephones, and health.</p> <p>19 A Correct.</p> <p>20 Q So explain for me how those socio-economic</p> <p>21 measures stem from the state-sponsored official</p> <p>22 discrimination in Wisconsin.</p> <p>23 A Well, it's partly the state-sponsored, and</p> <p>24 obviously partly nonstate-sponsored history of</p> <p>25 discrimination.</p>	<p style="text-align: right;">84</p> <p>1 Because I think the denials of voter</p> <p>2 identification cards under the law are very heavily</p> <p>3 racially tilted. That is, at least in the ones I've</p> <p>4 seen -- and as I said this is a moving target</p> <p>5 because more are coming in -- those who were denied</p> <p>6 free IDs were overwhelmingly Hispanics and</p> <p>7 African-Americans. And, indeed, those in the</p> <p>8 process where I actually had individual records were</p> <p>9 overwhelmingly Hispanic and African-American.</p> <p>10 And I think virtually all of the Hispanics</p> <p>11 and African-Americans in this set of record were</p> <p>12 denied IDs, and the three whites were given IDs. So</p> <p>13 there was certainly, if you're talking about</p> <p>14 Secretary of Transportation, which I believe</p> <p>15 oversees the Department of Motor Vehicles, there</p> <p>16 certainly is at least on its face evidence of racial</p> <p>17 discrimination.</p> <p>18 And there is so much discretion in that.</p> <p>19 So it's not just some manual that everyone is</p> <p>20 following that leads to these racially disparate</p> <p>21 affects. But, again, this is a moving target.</p> <p>22 There are depositions I haven't seen. There's</p> <p>23 additional evidence that I haven't seen.</p> <p>24 But so far there certainly seems to be</p> <p>25 pretty clear evidence of racial discrimination, you</p>

<p style="text-align: right;">85</p> <p>1 <b>know, going up to the Department of Transportation,</b></p> <p>2 <b>which has responsibility for overseeing the DMV.</b></p> <p>3 Q So it's your opinion that the Secretary of</p> <p>4 the Department of Transportation in Wisconsin is</p> <p>5 engaged in intentional racial discrimination?</p> <p>6 A I didn't say that.</p> <p>7 Q Okay. What is your opinion, then?</p> <p>8 A My opinion is that the process places</p> <p>9 disparate burdens on African-Americans and</p> <p>10 Hispanics, as compared to whites. It's a process</p> <p>11 that is overseen by the Department of</p> <p>12 Transportation. And it's a process fraught with</p> <p>13 lots and lots of discretion.</p> <p>14 So while I'm not saying the Secretary is</p> <p>15 personally involved in intentionally discriminating,</p> <p>16 I'm saying the process over which he presides is</p> <p>17 racially discriminatory. And I think while, again,</p> <p>18 there's lots of evidence I have to look at, there's</p> <p>19 some inferences that one can draw about intent here.</p> <p>20 That -- let me explain. We just had an</p> <p>21 opinion from a three-judge panel of the fourth</p> <p>22 circuit by Judge Easterbrook, who was the judge who</p> <p>23 had overturned district court opinion by Judge</p> <p>24 Adelman. And he pointed to this process and how it</p> <p>25 was personally affecting individuals, denying them</p>	<p style="text-align: right;">87</p> <p>1 this is materials you haven't had a chance to</p> <p>2 review.</p> <p>3 But you can answer.</p> <p>4 A Yeah, I haven't had a chance to review.</p> <p>5 Of course I just looked at it. It just came out.</p> <p>6 But it strengthens my finding that this</p> <p>7 was initially adopted and implemented with intent to</p> <p>8 limit opportunities for minorities, particularly</p> <p>9 Hispanics and African-Americans, to register and</p> <p>10 vote in the State of Wisconsin.</p> <p>11 And the reason is, this was rejected, an</p> <p>12 affidavit option. It was voted down at the time</p> <p>13 that Act 23 was adopted. The state has known for</p> <p>14 some time about the difficulties of the IDPP</p> <p>15 process, about people who were, you know, knowing --</p> <p>16 had any information that they were fraudsters.</p> <p>17 And certainly they weren't. No fraudster</p> <p>18 would go through this process if they weren't U.S.</p> <p>19 citizens, and yet they were told they couldn't vote.</p> <p>20 And only after the pressure of litigation</p> <p>21 and the pressure of adverse opinion from the fourth</p> <p>22 circuit did they suddenly wake up and say, Oh, maybe</p> <p>23 we ought to do at least some minor thing to rectify</p> <p>24 these problems, problems that were evident for a</p> <p>25 very long time. At least since 2015.</p>
<p style="text-align: right;">86</p> <p>1 the right to vote. Something I highlighted in my</p> <p>2 report. I haven't seen anything like this since the</p> <p>3 days of literacy tests.</p> <p>4 And he says, you know, there can be a</p> <p>5 corrective for this. Well, why didn't the state on</p> <p>6 its own initiative move for a corrective? Why did</p> <p>7 they let this process go on and on and on and on for</p> <p>8 months and years, and had to be instructed by the</p> <p>9 4th circuit to consider a corrective?</p> <p>10 And all the sudden I see a memorandum from</p> <p>11 the Governor talking about a possible corrective for</p> <p>12 this, after they are forced to do so, essentially,</p> <p>13 by the fourth circuit after they're facing</p> <p>14 litigation.</p> <p>15 Q Let's talk about that memorandum. So what</p> <p>16 memorandum are you talking about?</p> <p>17 A I just saw it. It was something about a</p> <p>18 new rule that under certain circumstances would</p> <p>19 enable persons to get a free ID by affidavit.</p> <p>20 Q And so, I mean, I don't want you to</p> <p>21 speculate about that. But how would that impact</p> <p>22 your opinions in this case?</p> <p>23 A Very directly.</p> <p>24 MR. SPIVA: Well, I'm going to just lodge</p> <p>25 an objection and caution you not to speculate, as</p>	<p style="text-align: right;">88</p> <p>1 Q So at this point you don't understand what</p> <p>2 that change to the IDPP is going to involve; do you?</p> <p>3 A Not in detail. But that doesn't matter.</p> <p>4 That's not my point. My point is quite a different</p> <p>5 one. My point is, they only took action under</p> <p>6 pressure.</p> <p>7 Q When did you think --</p> <p>8 A Let me finish.</p> <p>9 Q Okay.</p> <p>10 A Very similar to what happened in the</p> <p>11 petition process in the first place.</p> <p>12 There was no petition process until the</p> <p>13 State Supreme Court forced them to adopt a petition</p> <p>14 process.</p> <p>15 So we see a pattern here. We see a</p> <p>16 pattern of the state not taking obvious amelioratory</p> <p>17 steps which would ease the burden of this law upon</p> <p>18 low-income persons, low-education persons, persons</p> <p>19 with language difficulties, and minorities.</p> <p>20 And, of course, the two are correlated.</p> <p>21 And it's not as if the State of Wisconsin did not</p> <p>22 have before it examples of other states that had</p> <p>23 adopted these kind of amelioratory measures, like</p> <p>24 South Carolina, where the court actually said this</p> <p>25 was critical. This was critical in our providing</p>



<p style="text-align: right;">89</p> <p>1 preclearance to South Carolina.</p> <p>2 <b>So it was a wealth of information that the</b></p> <p>3 <b>state already had, and they never acted until some</b></p> <p>4 <b>external agency forced them to.</b></p> <p>5 Q So going back to, just so I'm clear, it is</p> <p>6 not your expert opinion that the Secretary of the</p> <p>7 Department of Transportation is engaging in</p> <p>8 intentional racial discrimination?</p> <p>9 MR. SPIVA: Object to form.</p> <p>10 But you can answer.</p> <p>11 A <b>I think I already answered that.</b></p> <p>12 Q Okay.</p> <p>13 A <b>As I said, I don't -- I have not looked at</b></p> <p>14 <b>any information coming directly from the Secretary.</b></p> <p>15 <b>But he is presiding over a discriminatory process.</b></p> <p>16 <b>That's all I can tell you.</b></p> <p>17 Q So who are the racists at the DMV --</p> <p>18 MR. SPIVA: Objection.</p> <p>19 Q -- that are engaging in this intentional</p> <p>20 racial discrimination?</p> <p>21 A <b>I --</b></p> <p>22 MR. SPIVA: Objection to form.</p> <p>23 But you can answer.</p> <p>24 A <b>I never called anyone a racist.</b></p> <p>25 Q So who at the DMV is engaging in</p>	<p style="text-align: right;">91</p> <p>1 <b>limiting their opportunity to register and vote.</b></p> <p>2 Q So the legislature has no oversight</p> <p>3 directly over the IDPP. Is that right?</p> <p>4 A <b>It doesn't directly oversee it. But it</b></p> <p>5 <b>certainly could hold hearings, legislature has that</b></p> <p>6 <b>power, on the IDPP process. And I am not aware that</b></p> <p>7 <b>it's held any hearings.</b></p> <p>8 <b>And it certainly could have adopted,</b></p> <p>9 <b>either way back when in 2011 or once it was known</b></p> <p>10 <b>that this was a problematic process, an ameliorative</b></p> <p>11 <b>measure. It didn't do so.</b></p> <p>12 Q So it's your expert opinion that the</p> <p>13 issues you've highlighted with the IDPP can be used</p> <p>14 to ascertain legislative intent when the law was</p> <p>15 passed in 2011?</p> <p>16 A <b>No. You have not correctly analyzed my</b></p> <p>17 <b>position at all.</b></p> <p>18 <b>I have lots of reasons, even before I knew</b></p> <p>19 <b>about the IDPP process, about what was going on in</b></p> <p>20 <b>2011. What I am saying is, now that I know</b></p> <p>21 <b>something about the IDPP process, and what was done</b></p> <p>22 <b>and what wasn't done, that reinforces my opinion</b></p> <p>23 <b>with regard to legislative intent.</b></p> <p>24 Q Page 4 of the report, you state that this</p> <p>25 information was available to the legislature.</p>
<p style="text-align: right;">90</p> <p>1 intentional racial discrimination?</p> <p>2 A <b>You mean what particular persons?</b></p> <p>3 Q Yes.</p> <p>4 A <b>I can't say what particular persons. I</b></p> <p>5 <b>can only talk about a process that is racially</b></p> <p>6 <b>discriminatory, that was known to be racially</b></p> <p>7 <b>discriminatory, and in which the state did not take</b></p> <p>8 <b>ameliorative action until lawsuits are filed,</b></p> <p>9 <b>they're facing liability, and get adverse opinion</b></p> <p>10 <b>from Judge Easterbrook.</b></p> <p>11 Q Do you agree, though, that for there to be</p> <p>12 any intentional racial discrimination there would</p> <p>13 have to be a person engaging in it?</p> <p>14 MR. SPIVA: Objection to the extent it</p> <p>15 calls for a legal conclusion.</p> <p>16 A <b>I don't think you have to psycho analyze</b></p> <p>17 <b>an individual person. But you could look at both</b></p> <p>18 <b>the circumstantial and direct evidence, and from</b></p> <p>19 <b>that draw inferences about intent.</b></p> <p>20 <b>And in addition to the direct evidence, in</b></p> <p>21 <b>our colloquy that we've been having so far, I've</b></p> <p>22 <b>given ample reasons why one would draw the inference</b></p> <p>23 <b>that the state decision-makers, the governor, the</b></p> <p>24 <b>legislature, the ultimate authorities here, had</b></p> <p>25 <b>intent to discriminate against minorities by</b></p>	<p style="text-align: right;">92</p> <p>1 Do you see that?</p> <p>2 A <b>I do.</b></p> <p>3 Q What evidence did you rely upon to</p> <p>4 conclude that the information, while available, was</p> <p>5 actually reviewed by the legislature?</p> <p>6 A <b>Well, there is no way to directly know</b></p> <p>7 <b>what any legislative or legislative body in this</b></p> <p>8 <b>case reviewed, because this was adopted so quickly,</b></p> <p>9 <b>without extensive hearings and review.</b></p> <p>10 <b>But I've been watching politics for 50</b></p> <p>11 <b>years. I've, you know, written extensively on</b></p> <p>12 <b>politics. I've been a redistricting advisor to</b></p> <p>13 <b>state and local governments. Politicians live and</b></p> <p>14 <b>breathe this stuff. They have to know about racial</b></p> <p>15 <b>disparities in socio-economic standings. They would</b></p> <p>16 <b>have to be -- you know, stop their ears and close</b></p> <p>17 <b>their eyes not to know these things.</b></p> <p>18 <b>Because this relates to their careers and</b></p> <p>19 <b>their lives. And it's pretty common knowledge.</b></p> <p>20 Q In the same page you state that Wisconsin,</p> <p>21 quote, "had an exemplary electoral system." And I</p> <p>22 emphasize the word "had."</p> <p>23 A <b>Where is that? I'm sorry.</b></p> <p>24 Q Third from the bottom bullet point, Page</p> <p>25 4.</p>

<p style="text-align: right;">93</p> <p>1 <b>A Yes, that's correct.</b></p> <p>2 Q And I emphasize the word "had."</p> <p>3 <b>A Correct.</b></p> <p>4 Q It is your opinion that Wisconsin no</p> <p>5 longer has an exemplary electoral system?</p> <p>6 <b>A Correct.</b></p> <p>7 Q And why is that?</p> <p>8 <b>A Because of the voter ID law and these</b></p> <p>9 <b>other pieces of legislation that I cite make it less</b></p> <p>10 <b>exemplary -- less exemplary than it has been, in my</b></p> <p>11 <b>opinion.</b></p> <p>12 Q Next sentence of the same bullet point,</p> <p>13 "It" -- meaning Wisconsin -- "was a national leader</p> <p>14 in voter turnout."</p> <p>15 <b>A That's correct.</b></p> <p>16 Q It is no longer a national leader in voter</p> <p>17 turnout?</p> <p>18 <b>A No, I didn't say that. But this is</b></p> <p>19 <b>critical. We're talking about at the time these</b></p> <p>20 <b>laws were adopted. Because this goes to intent.</b></p> <p>21 <b>It was one of the very few states that was</b></p> <p>22 <b>right at the top of the list in terms of election</b></p> <p>23 <b>administration and was one of the very few states</b></p> <p>24 <b>that was at the top of the list in terms of voter</b></p> <p>25 <b>turnout.</b></p>	<p style="text-align: right;">95</p> <p>1 turnout, exactly, you know, following intent.</p> <p>2 <b>But generally you cannot determine the</b></p> <p>3 <b>effects of racially discriminatory laws by aggregate</b></p> <p>4 <b>turnout, because so many factors are involved in</b></p> <p>5 <b>aggregate turnout.</b></p> <p>6 <b>For example, in this primary, very rare to</b></p> <p>7 <b>have two very hot contests in both parties going on</b></p> <p>8 <b>at the same time. Didn't have that in 2012. Didn't</b></p> <p>9 <b>have that in 2008. This is something brand-new.</b></p> <p>10 <b>We also had some very exciting and</b></p> <p>11 <b>interesting candidates. You know, Bernie Sanders,</b></p> <p>12 <b>someone pretty new on the Democratic side. Donald</b></p> <p>13 <b>Trump, someone quite new and controversial on the</b></p> <p>14 <b>Republican side.</b></p> <p>15 <b>And you kind of had a -- both a pro and</b></p> <p>16 <b>con effect in stimulating turnout in the primary</b></p> <p>17 <b>election.</b></p> <p>18 <b>There is also the efficiency of the get</b></p> <p>19 <b>out -- the vote campaign, as well as changes in the</b></p> <p>20 <b>population. You know, has the population increased</b></p> <p>21 <b>over this time as well.</b></p> <p>22 <b>Those are just a few examples of things</b></p> <p>23 <b>that are big effects on aggregate turnouts. That's</b></p> <p>24 <b>why you've got to look at the individual level. And</b></p> <p>25 <b>I think I talked about this quite a bit in my</b></p>
<p style="text-align: right;">94</p> <p>1 <b>In other words, the system wasn't broken.</b></p> <p>2 <b>The system didn't need fixing. So one can't say,</b></p> <p>3 <b>Oh, we had to adopt 15 new measures because</b></p> <p>4 <b>Wisconsin was in trouble with when it came to</b></p> <p>5 <b>election administration and turnout.</b></p> <p>6 Q So has Wisconsin's voter turnout declined</p> <p>7 since these measures have been enacted?</p> <p>8 <b>A I think voter photo ID just came into play</b></p> <p>9 <b>recently. But so far, in the aggregate, no.</b></p> <p>10 Q And in the two most recent elections,</p> <p>11 February and April 2016, in which voter photo ID was</p> <p>12 in effect, how has turnout been?</p> <p>13 <b>A I don't -- I don't recall the February</b></p> <p>14 <b>2015 turnout. But the turnout in the primary was</b></p> <p>15 <b>very strong.</b></p> <p>16 Q And was it, in fact, the highest turnout</p> <p>17 in any presidential primary since 1972?</p> <p>18 <b>A I believe that's right.</b></p> <p>19 Q How do you explain that?</p> <p>20 <b>A You cannot measure a discriminatory system</b></p> <p>21 <b>by aggregate turnout. You have to look at what's</b></p> <p>22 <b>going on among the individuals.</b></p> <p>23 <b>And I have not seen any individual level</b></p> <p>24 <b>analysis of 2016. I have seen some for 2014. And</b></p> <p>25 <b>you did see rising white relative to minority</b></p>	<p style="text-align: right;">96</p> <p>1 rebuttal report.</p> <p>2 Q So second to last bullet point on Page 4.</p> <p>3 You state, "Wisconsin was the most restrictive</p> <p>4 identification law in the nation at that time,"</p> <p>5 meaning in 2011?</p> <p>6 <b>A That's correct.</b></p> <p>7 Q Using, again, the past tense "was," is it</p> <p>8 now your position that Wisconsin is not the most</p> <p>9 restrictive identification law in the nation?</p> <p>10 <b>A Well, again, the reason I said "was," I</b></p> <p>11 <b>was looking at intent. And, you know, one of the</b></p> <p>12 <b>arguments that's always made in favor of voter ID,</b></p> <p>13 <b>Oh, we're just conforming to other states. So</b></p> <p>14 <b>Wisconsin doesn't conform to other states.</b></p> <p>15 <b>And even today one could make an argument</b></p> <p>16 <b>it's certainly if not the most restrictive, it's one</b></p> <p>17 <b>of the most restrictive. One of the very few</b></p> <p>18 <b>restrictive voter ID laws in the country. Yes, that</b></p> <p>19 <b>continues to be the case.</b></p> <p>20 Q What about the recent change that the</p> <p>21 legislature enacted allowing for veterans' ID cards?</p> <p>22 <b>A That helps. But it still -- you know,</b></p> <p>23 <b>there's still lots of kinds of ID cards that are</b></p> <p>24 <b>either not involved or are written in a way that</b></p> <p>25 <b>makes it very restrictive.</b></p>

<p style="text-align: right;">97</p> <p>1 <b>Plus, there is no alternative mechanism.</b></p> <p>2 <b>Plus, you have to have a voter ID for absentee</b></p> <p>3 <b>ballots. Plus, you have this very difficult process</b></p> <p>4 <b>for getting a free voter ID card.</b></p> <p>5 Q And you said that the legislature rejected</p> <p>6 all amendments. I'm talking about on Page 5 you</p> <p>7 talk about the amendments that were rejected, top</p> <p>8 bullet point.</p> <p>9 A Yeah.</p> <p>10 Q You do acknowledge, though, that the</p> <p>11 legislature enacted the free voter ID program.</p> <p>12 Correct?</p> <p>13 A They had to, or the law would have been</p> <p>14 declared -- clearly would have been struck down if</p> <p>15 they had no free ID program.</p> <p>16 Q Okay. Now, something on Page 5 really</p> <p>17 piqued my interest, which is the bullet point, third</p> <p>18 from the last bullet point. "There is rare direct</p> <p>19 evidence from a Republican decision-maker."</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q What is that?</p> <p>23 A That's the Schultz evidence.</p> <p>24 Q Okay. And so that's later on it's at Page</p> <p>25 40 or 50 something, Page 51?</p>	<p style="text-align: right;">99</p> <p>1 A In the spirit of the champion of the 1957</p> <p>2 voting rights act. What was the 1957 voting rights</p> <p>3 act designed to do? To combat racial discrimination</p> <p>4 against minorities, particularly against</p> <p>5 African-Americans. That's exactly what the 1957</p> <p>6 voting rights act under Republican President Dwight</p> <p>7 Eisenhower wanted to do.</p> <p>8 So clearly by referencing the 1957 voting</p> <p>9 rights act, you're talking about race.</p> <p>10 Q So what I don't understand there is,</p> <p>11 Schultz voted for the law. Correct?</p> <p>12 A Absolutely. That's what makes this</p> <p>13 statement so significant.</p> <p>14 Q So how --</p> <p>15 A It's not -- let me finish. It's not some</p> <p>16 Democrat grouching about the law.</p> <p>17 Q So how is he acting in the spirit of the</p> <p>18 champion of the 1957 voting rights act then? He</p> <p>19 would seem to, if he was passing voter ID, he is</p> <p>20 saying I was acting in the spirit of the champion of</p> <p>21 the 1957 voting rights act?</p> <p>22 A Well, I think he said he's had second</p> <p>23 thoughts about that. And he thinks that what he did</p> <p>24 in voting for that was mistaken, and not in the</p> <p>25 spirit, which he has tried to represent in his</p>
<p style="text-align: right;">98</p> <p>1 A Something like that. It's well into my</p> <p>2 report.</p> <p>3 Q That --</p> <p>4 A Let me finish. That is quite</p> <p>5 extraordinary for someone who voted for the law, who</p> <p>6 was a long-time Republican, to say, you know,</p> <p>7 I've -- I've now realized, you know, what my</p> <p>8 colleagues really doing was suppressing votes, and</p> <p>9 they shouldn't be doing that. We should be reaching</p> <p>10 out. We should be doing what Eisenhower did.</p> <p>11 That's really extraordinary, to have a</p> <p>12 decision-maker directly say, this law was designed</p> <p>13 to suppress -- suppress votes.</p> <p>14 Q Now, when you say -- that statement from</p> <p>15 Senator Schultz, what aspect of it indicates to you</p> <p>16 that it was a racial motivation to suppress votes?</p> <p>17 A Well, let's look at it specifically,</p> <p>18 rather than trying to -- what page did you say it</p> <p>19 was on? It's well into the report.</p> <p>20 Q Yeah. We're getting ahead of ourselves.</p> <p>21 A I think it's on 51.</p> <p>22 Q Okay. I think you're right.</p> <p>23 A And I think it's filled with racial</p> <p>24 reference.</p> <p>25 Q Okay. Highlight them for me.</p>	<p style="text-align: right;">100</p> <p>1 political career as a Republican in Wisconsin.</p> <p>2 Q But that is not, in fact, what he said.</p> <p>3 A What is not, in fact, what he said?</p> <p>4 Q What you just said.</p> <p>5 A He absolutely talks about the 1957 voting</p> <p>6 rights act.</p> <p>7 Q He says, "In the spirit of the champion of</p> <p>8 the 1957 voting rights act, I have been trying to</p> <p>9 send a message that we are not encouraging voting."</p> <p>10 A Right.</p> <p>11 Q So how is voting for the law you say is</p> <p>12 intentionally racially discriminatory in the spirit</p> <p>13 of the 1957 voting rights act?</p> <p>14 A It isn't. And I think it's quite clear</p> <p>15 from these statements that he regrets what he did in</p> <p>16 voting for Act 23. You know, if he still believed</p> <p>17 Act 23 was not racially discriminatory, he wouldn't</p> <p>18 be saying all these things.</p> <p>19 Q So he is -- is he saying that -- you're</p> <p>20 saying that this is evidence that he believes he was</p> <p>21 himself engaged in intentional racial</p> <p>22 discrimination?</p> <p>23 A Not necessarily. But at least he was</p> <p>24 going along, along with what he now believes to be</p> <p>25 intentional racial discrimination, yes.</p>

<p style="text-align: right;">101</p> <p>1       <b>He doesn't go deeply into his own</b>  2       <b>motivations. But I think he makes clear that this</b>  3       <b>bill was adopted with the intent to suppress votes,</b>  4       <b>particularly of minorities.</b>  5       Q   In doing legislative intent analysis, and  6       opining upon it --  7       A   Yes.  8       Q   -- is it common to look to statements made  9       post hoc, several years into the future after the  10      law was passed?  11      A   Certainly, if they cast light on what was  12      done at the time the law was passed. Particularly  13      by a decision-maker who voted for the law.  14      I mean, it's not like this is some  15      ambitious politician trying to gain some political  16      advantage of this. He's at the end of his career.  17      He has no political motivation. If anything, this  18      is against his interest, because it goes against his  19      colleagues of many decades.  20      And so, you know, that's one thing you  21      look at, you know, is there some other motivation  22      for making the statement. And quite the contrary.  23      There would be every reason to not jump into this  24      controversy at the end of your political career.  25      Q   Is there any other, as you say, rare</p>	<p style="text-align: right;">103</p> <p>1       by suppressing the votes of minorities, you're going  2       to get political advantage to your party.  3       I am not saying they are personally  4       racist. I don't know whether they are or not. But,  5       clearly, if voter ID was not suppressing the votes  6       of Democrats, it would not be helping Senator  7       Grothman to get the Republicans to win the general  8       election of 2016.  9       And we know what is the most loyal  10      Democratic base in the State of Wisconsin, and in  11      fact anywhere, is the African-American voter base.  12      And, secondly, the Latino voter base.  13      Q   And so it is your opinion, then, that  14      voter ID laws suppress the vote of  15      African-Americans?  16      A   Yes. And I haven't finished answering  17      your first question. I'll elaborate on that, if  18      you'd like.  19      But there is additional direct evidence  20      from a staffer, who I believe his name was Aulbaugh,  21      who is now running a coffee shop or some such. And  22      he was in on the meetings.  23      And he said quite clearly in his  24      opinion -- and he said he was a 30-year Republican  25      operative, he is, again, not someone who is involved</p>
<p style="text-align: right;">102</p> <p>1       direct evidence from a Republican decision-maker of  2       the intentional racial discrimination?  3       A   Absolutely.  4       Q   There is?  5       A   Yes. We have the statement that I think I  6       mentioned to you at the very beginning of this  7       deposition that just came out by now Congressman,  8       then Senator Grothman, who was very much involved in  9       passing these laws that I'm talking about.  10      And he said quite explicitly, in helping  11      us to win the presidential election in Wisconsin,  12      that the voter ID law -- I'm not -- I am  13      paraphrasing -- is going to help us a little bit.  14      Q   And why would that be racist?  15      A   You're using a term that I'm not using.  16      I'm not saying he --  17      Q   Why would that be evidence of intentional  18      racial discrimination?  19      MR. SPIVA: Wait. He is not finished.  20      A   I'm not finished.  21      Q   Okay.  22      A   You're using a term I have not used  23      anywhere in my report or anywhere in my testimony.  24      I am not accusing people of being racist. I am  25      accusing politicians of being politicians. That is,</p>	<p style="text-align: right;">104</p> <p>1       in politics and trying to get political advantage,  2       as far as I know.  3       And he said clearly his understanding of  4       those meetings were that the Republicans involved  5       fully understood that this bill would give them  6       political advantage by limiting minority votes.  7       Q   Have you spoken with him?  8       A   No. I just watched his interview on  9       television.  10      Q   Okay.  11      A   He was pretty plain, what he had to say.  12      Q   Okay. So those three things, the Schultz  13      quote from Page 51 of your report, the Grothman  14      quote from very recently, and the Todd Aulbaugh  15      statements, those are the rare direct evidence --  16      A   There's another one.  17      Q   Okay.  18      A   Another Grothman. And that is not talking  19      about voter ID, but I believe he was talking about  20      early voting. Saying we want to nip it in the bud,  21      what's going on in Milwaukee and Madison.  22      Q   Okay.  23      A   Again, not talking about uniformity or,  24      you know, any of the other justifications. But,  25      clearly, he did not want to see the spread of early</p>



<p style="text-align: right;">105</p> <p>1 voting practices. And, of course, early voting is</p> <p>2 disproportionately used by minorities.</p> <p>3 Q Anything else? Any other examples?</p> <p>4 A Well, there are other examples outside of</p> <p>5 Wisconsin by nationally prominent Republican</p> <p>6 consultants. So there is a fellow by the name of</p> <p>7 Trantor who works for Optimist Consulting, a</p> <p>8 Republican consulting firm. And they specialize in</p> <p>9 election dynamics and doing quantitative analysis of</p> <p>10 elections.</p> <p>11 And he said very clearly we're benefited</p> <p>12 by things like long lines and voter ID. We'll do</p> <p>13 whatever it takes as political professionals to win</p> <p>14 elections.</p> <p>15 You also have a -- it's a fairly old</p> <p>16 statement, but it's by very, very prominent</p> <p>17 Republican Paul Weyrich, one of the founders of the</p> <p>18 modern conservative Republican party. Someone I</p> <p>19 talk a lot about in my book, he's that famous.</p> <p>20 And he said, We don't want everyone to</p> <p>21 vote. We benefit as Republicans when the vote is</p> <p>22 limited.</p> <p>23 So while, you know, those four statements,</p> <p>24 which is a lot of direct statements from any one</p> <p>25 state, this sort of nationally prominent Republicans</p>	<p style="text-align: right;">107</p> <p>1 MR. KAWSKI: Oh, sure. Off the record,</p> <p>2 please.</p> <p>3 (A recess was taken.)</p> <p>4 BY MR. KAWSKI:</p> <p>5 Q So we were talking about the direct</p> <p>6 evidence of intentional racial discrimination that</p> <p>7 you highlighted.</p> <p>8 A Yes.</p> <p>9 Q And we talked about a number of examples.</p> <p>10 Are there others you can think of that you want to</p> <p>11 highlight today?</p> <p>12 A You know, we had certainly -- in the Texas</p> <p>13 case we had seen some examples as well of</p> <p>14 politicians talking about not wanting to enfranchise</p> <p>15 African-Americans or Hispanics because that just</p> <p>16 meant enfranchising Democratic voters.</p> <p>17 So it's not as if what's being said here</p> <p>18 in Wisconsin is out of line from what I've heard in</p> <p>19 other places, as well.</p> <p>20 Q Do you find the evidence from other states</p> <p>21 to be relevant to the analysis of Wisconsin</p> <p>22 legislative intent?</p> <p>23 A Yes.</p> <p>24 Q And why is that?</p> <p>25 A Because I have a section in my report on</p>
<p style="text-align: right;">106</p> <p>1 saying much the same thing.</p> <p>2 And, of course, we're all familiar with</p> <p>3 what, I think it was a speaker or a legislative</p> <p>4 leader in Pennsylvania said something very similar</p> <p>5 to what Grothman said about voter ID helping us in</p> <p>6 this case to elect Romney in Pennsylvania.</p> <p>7 Q So in doing analysis of legislative</p> <p>8 intent, do we -- is it acceptable to look to the</p> <p>9 statements of staff members of legislators?</p> <p>10 A Of course. Staff memories are intimately</p> <p>11 involved in the process of adopting legislation.</p> <p>12 It's not just done by members of the legislatures</p> <p>13 alone, but they're always consulting and working</p> <p>14 with their staff.</p> <p>15 And this guy was in the meeting. He was</p> <p>16 there. He is an eyewitness.</p> <p>17 Q What if it turns out he wasn't in the</p> <p>18 meeting?</p> <p>19 A Well, that would obviously diminish the</p> <p>20 impact of what he had to say, of course. I</p> <p>21 understand that. I'm only going on at this point</p> <p>22 what I know. And I guess, you know, you can hash</p> <p>23 that out at trial or whatever.</p> <p>24 Q Sure.</p> <p>25 A I need a break now.</p>	<p style="text-align: right;">108</p> <p>1 this, where I show that other states are facing</p> <p>2 similar situations, as in Wisconsin. You know,</p> <p>3 demographic pressure on the white vote, the minority</p> <p>4 vote being much more Democratic than the white vote.</p> <p>5 And I have a table showing in virtually every</p> <p>6 instance a recent adoption of voter photo ID laws.</p> <p>7 It's been Republicans responsible for those laws.</p> <p>8 So it's not as if Wisconsin is not part of</p> <p>9 a pattern; it is.</p> <p>10 Q Let's shift gears a little bit, then.</p> <p>11 A Sure.</p> <p>12 Q Just looking at Pages 6 through 14 of your</p> <p>13 report.</p> <p>14 A Yes.</p> <p>15 Q You talk about and illustrate the</p> <p>16 socio-economic factors that we talked about a little</p> <p>17 earlier. Correct? You have tables that talk about</p> <p>18 the differences and disparities between whites and</p> <p>19 minorities --</p> <p>20 A Correct.</p> <p>21 Q -- in various factors.</p> <p>22 A That's right.</p> <p>23 Q Could you explain how all of this</p> <p>24 information about socio-economic disparities is</p> <p>25 relevant to determining whether these laws were</p>



<p style="text-align: right;">109</p> <p>1 passed with a racially discriminatory intent?</p> <p>2 <b>A Yeah. I think it's directly relevant.</b></p> <p>3 <b>Because whenever you're placing additional</b></p> <p>4 <b>burdens on the opportunity to vote or to register,</b></p> <p>5 <b>those burdens are not going to be felt uniformly</b></p> <p>6 <b>across the persons in the state.</b></p> <p>7 <b>That is, they're going to fall with</b></p> <p>8 <b>special force upon those who have lower</b></p> <p>9 <b>socio-economic standing.</b></p> <p>10 <b>For example, education, income may</b></p> <p>11 <b>directly affect whether or not you have a photo</b></p> <p>12 <b>voter ID and your ability to navigate the entire</b></p> <p>13 <b>process of voter photo identification. It may well</b></p> <p>14 <b>affect your ability under various restrictions to</b></p> <p>15 <b>register to vote.</b></p> <p>16 <b>Whether you own a vehicle, whether you can</b></p> <p>17 <b>get to certain places, whether you understand all of</b></p> <p>18 <b>the laws. All of these things are directly and</b></p> <p>19 <b>intimately tied to socio-economic standing.</b></p> <p>20 <b>In fact, it is one of the best established</b></p> <p>21 <b>findings of political history and political science</b></p> <p>22 <b>that political participation is very much dependent</b></p> <p>23 <b>upon socio-economic standing.</b></p> <p>24 <b>Q Going ahead to Page 16.</b></p> <p>25 <b>A Okay.</b></p>	<p style="text-align: right;">111</p> <p>1 <b>That's correct. To show the trend and pattern.</b></p> <p>2 <b>Q Do you know what the sample size for this</b></p> <p>3 <b>exit poll in Table 6 was?</b></p> <p>4 <b>A I don't recall exactly what the sample</b></p> <p>5 <b>size was.</b></p> <p>6 <b>Q Do you know what the margin of error was?</b></p> <p>7 <b>A I don't recall exactly what the margin of</b></p> <p>8 <b>error. And that would depend upon whether you</b></p> <p>9 <b>wanted to do it at the .9 level, the .95 level,</b></p> <p>10 <b>the .9. But these are the best estimates that we</b></p> <p>11 <b>have. And I certainly didn't see anything in any of</b></p> <p>12 <b>your expert reports challenging these because they</b></p> <p>13 <b>were erroneous or the margin of error was too large.</b></p> <p>14 <b>I saw your experts using the same exact</b></p> <p>15 <b>exit polling results.</b></p> <p>16 <b>Q So is it typical, though, to report a</b></p> <p>17 <b>margin of error when you're reporting exit poll</b></p> <p>18 <b>results?</b></p> <p>19 <b>A Not usually. You know, when I've seen --</b></p> <p>20 <b>because they are generally so well established and</b></p> <p>21 <b>so well reliable, typically when I've seen exit</b></p> <p>22 <b>polling reports, when they're not, you know, fine</b></p> <p>23 <b>line for, like, a municipality but for a whole</b></p> <p>24 <b>state, for a big election, I've just seen the point</b></p> <p>25 <b>estimates. That's standard.</b></p>
<p style="text-align: right;">110</p> <p>1 <b>Q I noticed that some of these tables</b></p> <p>2 <b>reference exit polling conducted by Edison Research?</b></p> <p>3 <b>A Yes.</b></p> <p>4 <b>Q For example, Table 6.</b></p> <p>5 <b>A Yes, that's correct.</b></p> <p>6 <b>Q What is Edison Research?</b></p> <p>7 <b>A They're just a group that does all the</b></p> <p>8 <b>exit polling. Whenever you see CNN report the exit</b></p> <p>9 <b>poll or NBC, or any of them -- it doesn't matter</b></p> <p>10 <b>because they are all the same -- they're all</b></p> <p>11 <b>conducted by the name exit polling outfit.</b></p> <p>12 <b>So that's what they do.</b></p> <p>13 <b>Q How reliable is exit polling?</b></p> <p>14 <b>A It's pretty reliable. I mean, nothing is</b></p> <p>15 <b>perfect in political analysis. But it's pretty well</b></p> <p>16 <b>stood the test of time. Particularly when you're</b></p> <p>17 <b>exit-polling something as major as a gubernatorial</b></p> <p>18 <b>or a presidential contest.</b></p> <p>19 <b>And they -- you know, they add up pretty</b></p> <p>20 <b>well to the actual -- actual vote.</b></p> <p>21 <b>Q So in Table 6, for example, in stating the</b></p> <p>22 <b>results of this exit poll, you did not indicate what</b></p> <p>23 <b>the margin of error was. Correct?</b></p> <p>24 <b>A No. I did the best estimate that was</b></p> <p>25 <b>available through the exit poll, the point estimate.</b></p>	<p style="text-align: right;">112</p> <p>1 <b>Q So in social science, though, is it</b></p> <p>2 <b>typical to report a margin of error in your</b></p> <p>3 <b>analysis?</b></p> <p>4 <b>A Sometimes you do; sometimes you don't.</b></p> <p>5 <b>Depending upon the purpose.</b></p> <p>6 <b>I'm just looking here at the overall</b></p> <p>7 <b>trend. I'm not trying to specify, you know, to the</b></p> <p>8 <b>tenth of a percentage point what the exact turnout</b></p> <p>9 <b>was.</b></p> <p>10 <b>Q So we don't know how many people were</b></p> <p>11 <b>surveyed for the Table 6 data?</b></p> <p>12 <b>A I don't recall the exact number. But it's</b></p> <p>13 <b>not a little, tiny sample. It's not like 50 or 100</b></p> <p>14 <b>people. It's much larger than that.</b></p> <p>15 <b>Q Okay. And, again, is it standard in</b></p> <p>16 <b>social science to indicate for a survey how many</b></p> <p>17 <b>people were surveyed?</b></p> <p>18 <b>A These exit polls are so standard that, as</b></p> <p>19 <b>I have seen them used, they're used exactly the way</b></p> <p>20 <b>I've used them and exactly the way your experts have</b></p> <p>21 <b>used them.</b></p> <p>22 <b>Q Okay. Page 17, next page. First</b></p> <p>23 <b>sentence. "Exit poll data demonstrates that</b></p> <p>24 <b>Republican electoral success in Wisconsin turns in</b></p> <p>25 <b>part on the white voter turnout relative to minority</b></p>

<p style="text-align: right;">113</p> <p>1 turnout."</p> <p>2 Do you see that?</p> <p>3 <b>A Of course.</b></p> <p>4 <b>Q</b> You say in part it turns on white voter</p> <p>5 turnout relative. What other things would impact</p> <p>6 Republican electoral success in Wisconsin?</p> <p>7 <b>A Well, all kinds of things could impact,</b></p> <p>8 <b>such as the strength and weaknesses of particular</b></p> <p>9 <b>candidates, scandals that might affect candidates,</b></p> <p>10 <b>the particular issues that are raised in election.</b></p> <p>11 <b>These are all particularized factors to particular</b></p> <p>12 <b>elections. They are obviously going to have an</b></p> <p>13 <b>effect.</b></p> <p>14 <b>But as a generic factor that affects</b></p> <p>15 <b>essentially every election, is the relative shares</b></p> <p>16 <b>of the vote cast by whites and minorities. Because</b></p> <p>17 <b>there is such a big gap between them.</b></p> <p>18 <b>Q</b> Is it possible to control for -- in an</p> <p>19 analysis control for those factors that you just</p> <p>20 mentioned, such as scandals, interest, so forth?</p> <p>21 <b>A In a sense I did.</b></p> <p>22 <b>Q</b> Okay.</p> <p>23 <b>A Not formally. But in practice. Because</b></p> <p>24 <b>I've looked at so many elections.</b></p> <p>25 <b>It's not as if I just looked at one</b></p>	<p style="text-align: right;">115</p> <p>1 <b>elections, some of which involve incumbents, some of</b></p> <p>2 <b>which don't involve incumbents. And, yet, we have</b></p> <p>3 <b>the same kind of patterns holding.</b></p> <p>4 <b>Q</b> I mean, in 2010 in Wisconsin, are you</p> <p>5 aware that there was -- perhaps it's beyond</p> <p>6 Wisconsin, there was a Republican groundswell of</p> <p>7 support and Republican candidates took very many</p> <p>8 races in Wisconsin. Correct?</p> <p>9 <b>A That's right.</b></p> <p>10 <b>Q</b> Would it be possible to control for</p> <p>11 something like that in terms of a model you might</p> <p>12 make to determine whether minority turnout is truly</p> <p>13 impacting Republican success?</p> <p>14 <b>A Well, we're not looking at turnout in this</b></p> <p>15 <b>table.</b></p> <p>16 <b>Q</b> Okay.</p> <p>17 <b>A We're actually looking at the voting</b></p> <p>18 <b>patterns of minorities and whites. And they are no</b></p> <p>19 <b>different in that particular election than they are</b></p> <p>20 <b>in lots of other elections. All of them show a</b></p> <p>21 <b>similar gap between white and black voting,</b></p> <p>22 <b>regardless of any particular circumstance, whether</b></p> <p>23 <b>it's a good Republican year like 2006 or a good</b></p> <p>24 <b>Democratic year.</b></p> <p>25 <b>You may see the levels change. In other</b></p>
<p style="text-align: right;">114</p> <p>1 <b>election. I looked at a great variety of elections,</b></p> <p>2 <b>with a great variety of candidates, a great variety</b></p> <p>3 <b>of personalities. And you consistently see in every</b></p> <p>4 <b>single one of these elections a very large gap</b></p> <p>5 <b>between whites and blacks.</b></p> <p>6 <b>We obviously have less data for Hispanics,</b></p> <p>7 <b>but to the extent we have data, it shows a gap</b></p> <p>8 <b>between whites and Hispanics as well.</b></p> <p>9 <b>So these findings are not being jiggered</b></p> <p>10 <b>in any particular significant way by the</b></p> <p>11 <b>particularized features of these elections, because</b></p> <p>12 <b>I've looked at so many and they all show the same</b></p> <p>13 <b>pattern.</b></p> <p>14 <b>Q</b> For example, in the -- on Page 18, Table</p> <p>15 8, in the 2010 U.S. Senate race, Feingold versus</p> <p>16 Johnson.</p> <p>17 <b>A Yeah.</b></p> <p>18 <b>Q</b> It would be possible to control for</p> <p>19 incumbency when Feingold was the incumbent there?</p> <p>20 <b>A No.</b></p> <p>21 <b>Q</b> Why not?</p> <p>22 <b>A You would have to do a whole series of</b></p> <p>23 <b>analysis. You can't control for incumbency in one</b></p> <p>24 <b>individual election.</b></p> <p>25 <b>But as you know here, we've got lots of</b></p>	<p style="text-align: right;">116</p> <p>1 <b>words, in a good Republican year you're going to see</b></p> <p>2 <b>generally a higher level of votes for Republicans.</b></p> <p>3 <b>That follows automatically, because otherwise it</b></p> <p>4 <b>wouldn't be a good Republican year.</b></p> <p>5 <b>And in a good Democratic year you'll see</b></p> <p>6 <b>lower levels of results for Republicans.</b></p> <p>7 <b>But whether it's a good Democratic year or</b></p> <p>8 <b>a good Republican year, you see similar patterns of</b></p> <p>9 <b>difference, which is what this table is designed to</b></p> <p>10 <b>demonstrate.</b></p> <p>11 <b>Q</b> And this very topic comes up on Page 21 of</p> <p>12 your report. You say, Then in 2010 a good</p> <p>13 Republican year nationally, Republicans gained</p> <p>14 control.</p> <p>15 Do you see that?</p> <p>16 <b>A Of course.</b></p> <p>17 <b>Q</b> Why was 2010 a good Republican year</p> <p>18 nationally?</p> <p>19 <b>A You want me to give you my explanation of</b></p> <p>20 <b>it?</b></p> <p>21 <b>Q</b> Short explanation.</p> <p>22 <b>A Yeah, I mean, you're asking me these</b></p> <p>23 <b>open-ended questions. And I'll try to be brief.</b></p> <p>24 <b>There's some -- first there's a general</b></p> <p>25 <b>theory, called surge and decline.</b></p>

<p style="text-align: right;">117</p> <p>1 Are you familiar with that?</p> <p>2 Q Yeah.</p> <p>3 A You get a surge for the presidential</p> <p>4 candidates, you got a surge for Obama in 2008. And</p> <p>5 then a lot of those voters who surge for Obama were</p> <p>6 not necessarily going to come back and vote for the</p> <p>7 Democrats in 2010. So midterm elections generally,</p> <p>8 absent special circumstances like the impeachment of</p> <p>9 Bill Clinton, generally go against the party holding</p> <p>10 the White House.</p> <p>11 And I think more generically, you know,</p> <p>12 there was a lot of dissatisfaction in 2010 with what</p> <p>13 was going on in the country, what was going on in</p> <p>14 the Obama administration. A lot of analysts,</p> <p>15 including myself, called this a no election. People</p> <p>16 are unhappy so they're voting no. And who are they</p> <p>17 voting no for? The party that's in control.</p> <p>18 That's a very brief and not complete</p> <p>19 shorthand explanation of why 2010 was across the</p> <p>20 board a good Republican year.</p> <p>21 Q And based on what you know, that same</p> <p>22 explanation would apply to why it was a good</p> <p>23 Republican year in Wisconsin?</p> <p>24 A As a generic explanation, yes. It was a</p> <p>25 good Republican year almost everywhere. Wisconsin</p>	<p style="text-align: right;">119</p> <p>1 Q What would you like to see to have enough</p> <p>2 data to make a judgment?</p> <p>3 A Well, at least a presidential and a</p> <p>4 midterm.</p> <p>5 Q Okay. So perhaps after the 2016</p> <p>6 presidential and the 2018 midterm with voter ID in</p> <p>7 place, then we might know?</p> <p>8 A It's not just voter ID in place. It's all</p> <p>9 the other things.</p> <p>10 Nor am I making an argument that voter ID</p> <p>11 and these other laws are necessarily going to be</p> <p>12 manifest in a change in aggregate turnout. We've</p> <p>13 already gone through that whole colloquy.</p> <p>14 Q You've read Professor McCarty's report?</p> <p>15 A I don't remember it. My general</p> <p>16 impression was it didn't directly deal with the same</p> <p>17 issues I was dealing with, so I glanced at it.</p> <p>18 Q Okay.</p> <p>19 A I --</p> <p>20 Q But you read Professor Hood's report?</p> <p>21 A Oh, yes. Professor Hood's report I've</p> <p>22 certainly read.</p> <p>23 Q Okay. And so what -- do you recall what</p> <p>24 he concluded about turnout in Wisconsin and the</p> <p>25 trend in turnout, given that these changes have</p>
<p style="text-align: right;">118</p> <p>1 was not unique.</p> <p>2 Q Okay. And then, again, we talked about</p> <p>3 this a little bit. On Page 22 you state, middle</p> <p>4 paragraph, "In recent elections prior to 2011,</p> <p>5 Wisconsin was a national leader in the turnout of</p> <p>6 voters."</p> <p>7 Is it -- you see that statement?</p> <p>8 A Yes.</p> <p>9 Q Is it your expert opinion that Wisconsin</p> <p>10 is no longer a national leader in the turnout of</p> <p>11 voters?</p> <p>12 A We discussed that. I never said that.</p> <p>13 Q Okay.</p> <p>14 A I never said that, you know, at the</p> <p>15 aggregate level Wisconsin is no longer a national</p> <p>16 leader.</p> <p>17 But we don't have enough elections to tell</p> <p>18 yet. You know, the full panoply of laws passed are</p> <p>19 just now going into effect. We haven't even had a</p> <p>20 presidential election or a major midterm election</p> <p>21 with all the laws in effect.</p> <p>22 So my answer would have to be qualified by</p> <p>23 the fact that we don't know enough. We haven't had</p> <p>24 enough experience under these laws to make that</p> <p>25 judgment.</p>	<p style="text-align: right;">120</p> <p>1 occurred recently?</p> <p>2 A I don't recall specifically. You would</p> <p>3 have to --</p> <p>4 Q Okay.</p> <p>5 A Because he said a lot of things about</p> <p>6 turnout. You would have to show me the part of the</p> <p>7 report, and I'll respond to it.</p> <p>8 Q Okay. And then talked a little bit</p> <p>9 earlier about, you know, voter impersonation fraud</p> <p>10 and voter fraud. Right? We talked a little about</p> <p>11 that?</p> <p>12 A Just a little.</p> <p>13 Q Now we're getting to the part of the</p> <p>14 report that addresses that.</p> <p>15 A Yes.</p> <p>16 Q So I want to bring out another exhibit.</p> <p>17 So we can set the report to the side for now.</p> <p>18 A Sure. What page of my report are we</p> <p>19 dealing with now?</p> <p>20 Q I think 22 and 23. Maybe not.</p> <p>21 A No, that doesn't deal with fraud.</p> <p>22 Q Okay. It's here. It's 23 and 24, top of</p> <p>23 24 here. You state, "Despite the lack of" --</p> <p>24 A Right. But I have a much more extensive</p> <p>25 discussion of fraud elsewhere in my report, earlier</p>

<p style="text-align: right;">121</p> <p>1 <b>in my report, actually.</b></p> <p>2 Q We'll set the report aside for now, and I</p> <p>3 have another exhibit.</p> <p>4 <b>A Sure.</b></p> <p>5 MR. KAWSKI: Please mark that as Exhibit</p> <p>6 2.</p> <p>7 (Lichtman Deposition Exhibit 2 marked for</p> <p>8 identification and is attached to the transcript.)</p> <p>9 Q Take a look at Exhibit 2.</p> <p>10 <b>A Yeah.</b></p> <p>11 Q Do you recognize what that is?</p> <p>12 <b>A I do.</b></p> <p>13 Q What is it?</p> <p>14 <b>A It is the -- I believe it's the Supreme</b></p> <p>15 <b>Court opinion, the 2008 Crawford case involving the</b></p> <p>16 <b>Indiana voter photo ID law.</b></p> <p>17 Q You've read it?</p> <p>18 <b>A Yeah. Not recently but I've certainly</b></p> <p>19 <b>read it.</b></p> <p>20 Q Do you recall what the Justice Stevens</p> <p>21 opinion said about voter fraud?</p> <p>22 <b>A I think he found that there was no</b></p> <p>23 <b>extensive evidence of voter fraud.</b></p> <p>24 Q Could you turn to -- you see there's page</p> <p>25 numbering, Page 195. There is a heading, Voter</p>	<p style="text-align: right;">123</p> <p>1 MR. SPIVA: Objection. Well, okay. I</p> <p>2 mean, if you're just asking him factually whether</p> <p>3 they upheld the law, that's fine. I didn't know if</p> <p>4 you were asking for a legal conclusion.</p> <p>5 MR. KAWSKI: No.</p> <p>6 Q How would you explain that?</p> <p>7 MR. SPIVA: Objection to the extent it</p> <p>8 calls for a legal conclusion.</p> <p>9 <b>A You know, I've answered all of your</b></p> <p>10 <b>questions. But I now do think you're asking me to</b></p> <p>11 <b>explicate the legal reasoning of the Supreme Court.</b></p> <p>12 <b>And I'm going to decline to do that. I'm not a</b></p> <p>13 <b>lawyer.</b></p> <p>14 Q I said how would you explain that, not how</p> <p>15 the Supreme Court explained that.</p> <p>16 MR. SPIVA: Objection. Explain what?</p> <p>17 Q How would you explain that, you know, this</p> <p>18 law was deemed valid, but there was no evidence of</p> <p>19 any voter fraud?</p> <p>20 MR. SPIVA: Objection. Calls for a legal</p> <p>21 conclusion.</p> <p>22 <b>A Yeah, I'm -- again, I'm -- if you're</b></p> <p>23 <b>asking me for my opinion, that's one thing. If</b></p> <p>24 <b>you're asking me to explain legal reasoning, you</b></p> <p>25 <b>know, I'm not a lawyer.</b></p>
<p style="text-align: right;">122</p> <p>1 Fraud.</p> <p>2 And, again, the page number is --</p> <p>3 <b>A I see pages in the bottom here.</b></p> <p>4 Q They're kind of interlineated into the</p> <p>5 text in bold.</p> <p>6 <b>A If you could maybe direct me to these</b></p> <p>7 <b>pages in the bottom, it would be easier.</b></p> <p>8 Q Okay. Page 8 at the bottom.</p> <p>9 <b>A Page 8. Yeah. Voter Fraud. Yeah.</b></p> <p>10 Q Okay. And do you recall reading this at</p> <p>11 one point?</p> <p>12 <b>A Yes.</b></p> <p>13 Q Okay. So you see the sentence, second</p> <p>14 sentence of that paragraph under Voter Fraud, "The</p> <p>15 record contains no evidence of any such fraud</p> <p>16 actually occurring in Indiana at any time in its</p> <p>17 history."</p> <p>18 Do you see that sentence?</p> <p>19 <b>A I do.</b></p> <p>20 Q And is that what you were just referring</p> <p>21 to?</p> <p>22 <b>A Yes.</b></p> <p>23 Q Yet in this case the Supreme Court upheld</p> <p>24 Indiana's law. Correct?</p> <p>25 <b>A Correct.</b></p>	<p style="text-align: right;">124</p> <p>1 Q Okay. Let's go to another sentence. Same</p> <p>2 paragraph. "It remains true, however, that flagrant</p> <p>3 examples of such fraud in other parts of the country</p> <p>4 have been documented throughout this nation's</p> <p>5 history by respected historians and journalists."</p> <p>6 Do you see that?</p> <p>7 <b>A I do.</b></p> <p>8 Q Do you agree that that's an accurate</p> <p>9 recounting of history?</p> <p>10 <b>A Ancient history, maybe. But it's not an</b></p> <p>11 <b>accurate recounting of recent history. And it would</b></p> <p>12 <b>be a highly inaccurate recounting of history since</b></p> <p>13 <b>2008.</b></p> <p>14 Q Okay.</p> <p>15 <b>A So I would -- I would take a lot of issue</b></p> <p>16 <b>with that statement as a historian.</b></p> <p>17 Q What do you mean by "ancient history"?</p> <p>18 <b>A You know, 19th century, early 20th century</b></p> <p>19 <b>history. But let's say we're looking at the period</b></p> <p>20 <b>from 2000 onward.</b></p> <p>21 <b>There is virtually no evidence of voter</b></p> <p>22 <b>impersonation fraud existing anywhere in America.</b></p> <p>23 <b>And I cite some of the studies with respect to that,</b></p> <p>24 <b>both in Wisconsin and nationwide.</b></p> <p>25 <b>Those studies may not have been available</b></p>

<p style="text-align: right;">125</p> <p>1 at the time this decision was rendered. They are  2 available now. And they show a very different  3 conclusion from that which the Supreme Court reached  4 in 2008.  5 Q So you think that things have changed and  6 perhaps the Supreme Court's decision is not correct  7 anymore?  8 MR. SPIVA: Objection. Calls for a legal  9 conclusion.  10 A Yeah, I'm not going to make a legal. But  11 I think substantively the Supreme Court decision is  12 not correct. And remember, they are dependent upon  13 what was presented to them. Justice Stevens is not  14 doing his own independent analysis of voter fraud.  15 And I don't know what was presented to them.  16 But based on what I know, taking into  17 account even the last 15 years, which has been  18 extensively studied, there is virtually no evidence  19 whatsoever of voter impersonation fraud.  20 Q So same paragraph, last sentence of that  21 paragraph. Do you see where it states, "Not only is  22 the risk of voter fraud real, but that it could  23 affect the outcome of a close election."  24 Do you see that?  25 A I do.</p>	<p style="text-align: right;">127</p> <p>1 A I said voter fraud involving identity.  2 That is someone impersonating someone else.  3 Q Are you familiar with the case of Robert  4 Monroe from Shorewood in Wisconsin, criminal case?  5 A If -- I believe there has been one -- if  6 you're highlighting the one criminal case in 15  7 years that involved voter impersonation, that's  8 probably it.  9 Q I don't think it involved voter  10 impersonation.  11 A Okay. Then I'm not sure what the case is.  12 Q It involved absentee ballot fraud in  13 multiple voting.  14 A Then I am not familiar with it.  15 Q If you turn to the bottom, Page 9. So  16 next page. Top of the page, left-hand corner. The  17 sentence, "While the most effective method of  18 preventing election fraud may well be debatable, the  19 propriety of doing so is perfectly clear."  20 Do you see that?  21 A Yes.  22 Q Do you agree with that statement?  23 MR. SPIVA: Objection. Calls for a legal  24 conclusion.  25 A Yeah, as far as -- and I'm not sure what</p>
<p style="text-align: right;">126</p> <p>1 Q Do you agree that the risk of voter fraud  2 is real?  3 A Not very real, no. I think on the list of  4 things that I would worry about on elections,  5 particularly impersonation type of voter fraud that  6 involved identity, is virtually nonexistent.  7 And even where close elections have been  8 studied extensively looking for this, they haven't  9 found it.  10 Q Do you agree that voter fraud could affect  11 the outcome of a close election?  12 A Anything is possible. But I have not seen  13 any evidence, certainly not of in-person  14 impersonation type of voter fraud --  15 Q Okay.  16 A -- that affected the outcome of a close  17 election.  18 And given the virtual nonexistence of  19 voter fraud within the State of Wisconsin, as it  20 relates to identity, a close election is far more  21 likely, far more likely to be affected by  22 restrictions on voting of the kind passed in  23 Wisconsin than voter fraud involving identity.  24 Q So when you say "voter fraud," what do you  25 mean by the words "voter fraud"?</p>	<p style="text-align: right;">128</p> <p>1 they're talking about when they say, "the most  2 effective method of preventing election fraud."  3 I don't see voter ID as an effective  4 method for preventing election fraud, if that's what  5 they're referring to. I don't know. You pulled  6 that out of context.  7 Q Do you agree that the propriety of  8 preventing election fraud is perfectly clear?  9 A I'm not sure what's meant by the propriety  10 of doing so. So it's -- you're pulling things out  11 of context, that it's a little difficult for me to  12 respond to.  13 Q Do you agree that there is propriety in  14 preventing election fraud?  15 A Is there -- yes, of course, in the  16 abstract. But in reality, voter ID laws do nothing  17 to prevent election fraud, or essentially nothing.  18 Because the problem that they are designed to deal  19 with essentially doesn't exist.  20 Q Okay. Back to your report, Page 24. You  21 talk about how there were some Democrats who joined  22 the Republican majority in voting for Act 23.  23 Do you remember that?  24 A Three.  25 Q First of all, who are the three, if you</p>



<p style="text-align: right;">129</p> <p>1 remember?</p> <p>2 <b>A I don't remember. I'm sorry.</b></p> <p>3 Q Why do you think they did that?</p> <p>4 <b>A I have no idea. It's -- when you're</b></p> <p>5 <b>dealing with such a small minority, it's, you</b></p> <p>6 <b>know -- you're not dealing with large numbers of</b></p> <p>7 <b>legislators acting in a particular way. Who knows,</b></p> <p>8 <b>you know, what favors they may have been promised or</b></p> <p>9 <b>anything else to do this. I have no -- I'm not</b></p> <p>10 <b>saying they were. I'm just saying I have no idea</b></p> <p>11 <b>why they did this.</b></p> <p>12 <b>But, you know, they are the exception to</b></p> <p>13 <b>the rule.</b></p> <p>14 Q Wouldn't it be political suicide?</p> <p>15 <b>A It depends what districts they represent</b></p> <p>16 <b>and, you know, as I said, what they were promised</b></p> <p>17 <b>and what they were offered. Not necessarily for</b></p> <p>18 <b>such a small number.</b></p> <p>19 <b>Yes, you know, you have to raise some</b></p> <p>20 <b>concerns if it was 40 Democrats voting for it. But</b></p> <p>21 <b>three is very idiosyncratic.</b></p> <p>22 Q What does that tell you about the intent</p> <p>23 of the legislature?</p> <p>24 <b>A I don't think it tells me much of</b></p> <p>25 <b>anything.</b></p>	<p style="text-align: right;">131</p> <p>1 <b>A Yes.</b></p> <p>2 Q Third paragraph, you talk about strict</p> <p>3 photo identification states like Wisconsin.</p> <p>4 <b>A Yes.</b></p> <p>5 Q And then you go on to discuss provisional</p> <p>6 ballots and how that alternative works. Correct?</p> <p>7 MR. SPIVA: Are you talking about 26 on</p> <p>8 the report or 26 on the -- you know, there's, like,</p> <p>9 an ECF page number at the top.</p> <p>10 <b>A Yeah, I don't see --</b></p> <p>11 Q Twenty-six at the bottom of the page.</p> <p>12 <b>A Oh, okay.</b></p> <p>13 Q Yeah.</p> <p>14 <b>A Yes, I see it now.</b></p> <p>15 Q So is it the provisional ballot aspect</p> <p>16 that makes the law, in your mind, strict?</p> <p>17 <b>A Well, you can phrase it that way. I</b></p> <p>18 <b>prefer to phrase it a little more broadly. That is,</b></p> <p>19 <b>the law is strict in that if you don't have an</b></p> <p>20 <b>acceptable ID, you have to take additional action to</b></p> <p>21 <b>enable your vote to count. You can't correct the</b></p> <p>22 <b>action right there at the polls.</b></p> <p>23 <b>So in the case of Wisconsin, you've got to</b></p> <p>24 <b>either get an ID or fetch an ID and come back by, I</b></p> <p>25 <b>think it's 8 o'clock on election day or 4 p.m. on</b></p>
<p style="text-align: right;">130</p> <p>1 Q No?</p> <p>2 <b>A Except for the fact that overwhelmingly</b></p> <p>3 <b>these bills were passed along partisan lines, with a</b></p> <p>4 <b>very minor exception.</b></p> <p>5 Q Could it be said they were passed with</p> <p>6 bipartisan support?</p> <p>7 <b>A I don't think so. I don't think three</b></p> <p>8 <b>cross-over votes in the entire legislature indicates</b></p> <p>9 <b>bipartisan support.</b></p> <p>10 Q Is there some threshold that would</p> <p>11 indicate bipartisan support?</p> <p>12 <b>A Not necessarily. But it would have to be</b></p> <p>13 <b>more than token.</b></p> <p>14 Q Okay.</p> <p>15 <b>A It would have to be something, more</b></p> <p>16 <b>substantial proportion. Certainly if it was</b></p> <p>17 <b>majority support or near majority support, you would</b></p> <p>18 <b>say, yes, this is bipartisan legislation.</b></p> <p>19 Q Okay.</p> <p>20 MR. SPIVA: If you're going to switch</p> <p>21 gears, it might be a good place to stop.</p> <p>22 MR. KAWSKI: Yes. Let's stop.</p> <p>23 (A recess was taken.)</p> <p>24 BY MR. KAWSKI:</p> <p>25 Q Looking at your report on Page 26.</p>	<p style="text-align: right;">132</p> <p>1 <b>Friday.</b></p> <p>2 Q So would you only characterize voter photo</p> <p>3 ID laws as nonstrict if they have some kind of, like</p> <p>4 you say, at the polling place on election day</p> <p>5 alternative?</p> <p>6 <b>A Yes. And there are many -- you know, lots</b></p> <p>7 <b>of different kinds of alternatives.</b></p> <p>8 Q Okay. Pages 27 and 28, you look at data</p> <p>9 from a survey of performance of American elections</p> <p>10 from 2008.</p> <p>11 <b>A I think it's 28 and 29, actually, I have</b></p> <p>12 <b>the table on that.</b></p> <p>13 Q Actually, I'm looking at, again, the</p> <p>14 bottom of the pages.</p> <p>15 <b>A Oh, I'm sorry.</b></p> <p>16 Q Twenty-seven and 28.</p> <p>17 <b>A Yes, I reference it there, but the tables</b></p> <p>18 <b>are a little later.</b></p> <p>19 Q Is there any evidence that you've seen</p> <p>20 that this survey was placed before the Wisconsin</p> <p>21 legislature as something they were made aware of?</p> <p>22 <b>A I can't say that this survey particularly</b></p> <p>23 <b>was placed. Although it may have been mentioned in</b></p> <p>24 <b>some of the material that was placed before them.</b></p> <p>25 <b>I know that there was lots of information</b></p>

<p style="text-align: right;">133</p> <p>1 placed before them. Some of it by a group of</p> <p>2 professors who sent them a letter, other</p> <p>3 information, probably more of an anecdotal rather</p> <p>4 than statistical, was presented by African-American</p> <p>5 legislators.</p> <p>6 I don't recall if the letter actually</p> <p>7 referenced this survey. It may well have.</p> <p>8 Q Okay. And so in terms of the analysis</p> <p>9 that you've done in this case, a 2008 survey is</p> <p>10 still relevant?</p> <p>11 A It's extremely relevant. Because I'm</p> <p>12 talking about intent. And this is something that</p> <p>13 was readily available and consistent with other</p> <p>14 findings at the time they adopted Act 23 in 2011.</p> <p>15 Q Okay. And I guess what I mean by that is,</p> <p>16 three years passed between the time of the survey</p> <p>17 and 2011, that doesn't change the analysis for you?</p> <p>18 A Well, that was the last presidential</p> <p>19 election. So it was the last biggest sample that we</p> <p>20 had for this information.</p> <p>21 Plus, it doesn't get released instantly.</p> <p>22 You're talking about some time in 2009.</p> <p>23 Q Okay. On Page 29 at the bottom, then,</p> <p>24 Table 11 talks about passport possession rates?</p> <p>25 A Yes.</p>	<p style="text-align: right;">135</p> <p>1 2008 survey that we were just talking about?</p> <p>2 A Correct.</p> <p>3 Q Okay.</p> <p>4 A The survey that was obviously available</p> <p>5 before Act 23 was enacted.</p> <p>6 Q Are you aware of any other surveys that</p> <p>7 have analyzed that issue, or was that the only we</p> <p>8 have?</p> <p>9 MR. SPIVA: Objection to form.</p> <p>10 A There may be some question, I'm not sure</p> <p>11 back then, at some point in the Cooperative</p> <p>12 Congressional Election Survey. But I don't recall</p> <p>13 the exact form of the question.</p> <p>14 Q And when was that survey completed?</p> <p>15 A That's like these. It's done every</p> <p>16 midterm and presidential year.</p> <p>17 Q Okay. Let's set the report to the side</p> <p>18 for now.</p> <p>19 A Okay.</p> <p>20 Q I am going to bring out another exhibit.</p> <p>21 MR. KAWSKI: So a copy for the witness.</p> <p>22 (Lichtman Deposition Exhibit 3 marked for</p> <p>23 identification and is attached to the transcript.)</p> <p>24 Q Take a look at Exhibit 3.</p> <p>25 A I'm familiar with this article.</p>
<p style="text-align: right;">134</p> <p>1 Q And again it's referencing the same 2008</p> <p>2 survey?</p> <p>3 A Yes.</p> <p>4 Q You have not in your expert analysis</p> <p>5 studied the possession of passports and who</p> <p>6 possesses them in Wisconsin in 2016; have you?</p> <p>7 A No.</p> <p>8 Q Okay. Do you know if anyone has?</p> <p>9 A I'm not aware. And I haven't looked for</p> <p>10 it, so I can't say.</p> <p>11 Q Okay. But would you agree that the</p> <p>12 possession rates probably should be similar to what</p> <p>13 is in Table 11?</p> <p>14 A You're asking me for speculation. I will</p> <p>15 speculate. I'm not sure the levels will be the</p> <p>16 same, but there's a pretty good chance that the</p> <p>17 disparities would still exist and still be at least</p> <p>18 somewhat similar.</p> <p>19 Q Okay. Top of Page 30.</p> <p>20 A Yes.</p> <p>21 Q You make a statement, "African-Americans</p> <p>22 and Hispanics were substantially more likely to be</p> <p>23 deterred from voting because they lacked the</p> <p>24 requisite identification."</p> <p>25 And that statement, is that based on the</p>	<p style="text-align: right;">136</p> <p>1 Q You are. What is it?</p> <p>2 A It is an article on identification</p> <p>3 requirements evidenced from experience of voters on</p> <p>4 election day, published in January 2009.</p> <p>5 Q And that's in -- if you look at the bottom</p> <p>6 right-hand corner of the first page, it says PS. Is</p> <p>7 that -- your understanding is PS is PS, Political</p> <p>8 Science and Politics, a journal?</p> <p>9 A Correct.</p> <p>10 Q I would like you to take a look at Page</p> <p>11 129.</p> <p>12 A Okay.</p> <p>13 Q And if you see the first full paragraph</p> <p>14 immediately before the first full paragraph. It</p> <p>15 asks the question, "How many people were" denied the</p> <p>16 right -- "denied the vote as a result of voter</p> <p>17 identification requests."</p> <p>18 Do you see that?</p> <p>19 A I do.</p> <p>20 Q And then the author in the next sentence</p> <p>21 states, "The answer is, very few."</p> <p>22 Do you see that?</p> <p>23 A I do.</p> <p>24 Q And then he discusses two surveys, a 2006</p> <p>25 and 2008 survey in this paragraph?</p>

<p style="text-align: right;">137</p> <p>1 <b>A I believe that's right.</b></p> <p>2 Q Are you familiar with those surveys?</p> <p>3 <b>A I am.</b></p> <p>4 Q And you see in the third -- or in the</p> <p>5 second full paragraph, the author concludes that</p> <p>6 these surveys stated that this is an exceptionally</p> <p>7 low rate of denial of access to the vote.</p> <p>8 Do you see that?</p> <p>9 <b>A I do.</b></p> <p>10 Q How do you respond to these surveys?</p> <p>11 <b>A They were very limited surveys.</b></p> <p>12 <b>My recollection -- and we can delve</b></p> <p>13 <b>through the article to make sure my recollection is</b></p> <p>14 <b>correct -- is they did a general election in 2006</b></p> <p>15 <b>and then only a primary election in 2008. And in</b></p> <p>16 <b>2006, of course, I believe it was only one state</b></p> <p>17 <b>that had a -- I think it was either Indiana -- I</b></p> <p>18 <b>think it was Indiana. But there was only one state</b></p> <p>19 <b>that had a strict voter photo ID law. There was</b></p> <p>20 <b>more states in 2008. And we're dealing with a</b></p> <p>21 <b>presidential election with a vastly higher turnout</b></p> <p>22 <b>than primary elections.</b></p> <p>23 <b>So I think the more updated but still</b></p> <p>24 <b>available survey from 2008 is much more reliable</b></p> <p>25 <b>than anything they have concluded here because they</b></p>	<p style="text-align: right;">139</p> <p>1 <b>that actually have strict voter photo IDs. Of</b></p> <p>2 <b>course, with only one state operable, you're going</b></p> <p>3 <b>to find very low levels of those deterred from</b></p> <p>4 <b>voting by photo ID.</b></p> <p>5 <b>But as more states adopt laws, you have</b></p> <p>6 <b>more people indicating that they were deterred in</b></p> <p>7 <b>this fashion. And moreover, even the most recent</b></p> <p>8 <b>studies, which include many more states -- this is</b></p> <p>9 <b>only a minority of states. I think there were only</b></p> <p>10 <b>nine states.</b></p> <p>11 <b>So there is very little you can conclude</b></p> <p>12 <b>overall about the effects of voter photo ID from</b></p> <p>13 <b>this evidence from way back then. And the more</b></p> <p>14 <b>recent evidence shows much greater effects.</b></p> <p>15 Q What -- specifically what surveys are you</p> <p>16 talking about?</p> <p>17 <b>A The survey of the performance of American</b></p> <p>18 <b>elections and the Cooperative Congressional Election</b></p> <p>19 <b>Study.</b></p> <p>20 Q And you said that cooperative</p> <p>21 collection --</p> <p>22 <b>A Cooperative -- I believe that's one of the</b></p> <p>23 <b>ones he cites here. Cooperative Congressional</b></p> <p>24 <b>Election Survey.</b></p> <p>25 Q And so you're saying what year of that</p>
<p style="text-align: right;">138</p> <p>1 <b>were not the best elections to look at and there was</b></p> <p>2 <b>minimal strict voter photo ID laws in effect at this</b></p> <p>3 <b>time.</b></p> <p>4 Q And so the author Stephen Ansolabehere.</p> <p>5 Are you familiar with his work?</p> <p>6 <b>A I am.</b></p> <p>7 Q Do you know him?</p> <p>8 <b>A In passing.</b></p> <p>9 Q Is he a respected scholar in this area of</p> <p>10 election?</p> <p>11 <b>A Yeah. I'm not attacking Ansolabehere</b></p> <p>12 <b>here. I'm just saying the limitations of the</b></p> <p>13 <b>survey.</b></p> <p>14 Q Do you disagree with the conclusions he is</p> <p>15 making about voter ID presenting an insignificant</p> <p>16 barrier to voting?</p> <p>17 <b>A I do.</b></p> <p>18 Q Okay.</p> <p>19 <b>A I think more updated evidence shows it's</b></p> <p>20 <b>not.</b></p> <p>21 Q What more updated evidence is available?</p> <p>22 <b>A There is a wealth of more updated evidence</b></p> <p>23 <b>available. Not only do we have the 2008 survey, we</b></p> <p>24 <b>have subsequent surveys which are much more reliable</b></p> <p>25 <b>because they include much greater number of states</b></p>	<p style="text-align: right;">140</p> <p>1 survey would show different results?</p> <p>2 <b>A 2008 onward. We already have different</b></p> <p>3 <b>results being shown in my table in the performance</b></p> <p>4 <b>of American elections, even though a relatively</b></p> <p>5 <b>small number of states, even in 2008, had strict</b></p> <p>6 <b>voter photo identifications.</b></p> <p>7 <b>Later studies show, in fact, that you</b></p> <p>8 <b>could attribute a lack of voting on the part</b></p> <p>9 <b>nationwide of millions of registered voters as a</b></p> <p>10 <b>result of voter photo ID laws.</b></p> <p>11 Q You said there is a more recent CCES?</p> <p>12 <b>A Yes.</b></p> <p>13 Q That concludes otherwise?</p> <p>14 <b>A Yes.</b></p> <p>15 Q Where is it cited --</p> <p>16 <b>A All of the CCES and SPAE, are, as I told</b></p> <p>17 <b>you, conducted every two years.</b></p> <p>18 Q Okay. And so you're saying that there's</p> <p>19 an SPAE that's more recent than 2008?</p> <p>20 <b>A Yes.</b></p> <p>21 Q There is. So where is it cited in your</p> <p>22 report?</p> <p>23 <b>A Well, I cited the 2008 because that was</b></p> <p>24 <b>available at the time they made their decisions.</b></p> <p>25 <b>You asked me then the question about</b></p>

<p style="text-align: right;">141</p> <p>1 subsequent SPAEs, which would not have been 2 available at the time they made their decision on 3 voter photo ID. And they show very substantial 4 deterrent rates as a result of voter photo ID as 5 more states adopt the strict form. 6 Q Okay. And so going back to Page 129, 7 then, the third full paragraph. 8 Do you see where it states, "Of the 1,113 9 nonvoters in the survey, four cited this reason" -- 10 A I'm sorry, where are we? 11 Q Third full paragraph. 12 A One rejoined to these findings? 13 Is that the one? 14 Q Yes, that paragraph. 15 A Okay. 16 Q So it states, "Of the 1,113 nonvoters in 17 the survey, four cited this as a reason." And I 18 think it's referring to, "I did not have proper 19 identification," as a reason for not voting. 20 "And these individuals cited other reasons 21 as well, bad weather and forgot to vote. All told, 22 then, only seven out of 4,000 people, less than two 23 tenths of one percent of the electorate, could be 24 considered nonvoters at least in part because of 25 voter identification."</p>	<p style="text-align: right;">143</p> <p>1 maybe two states that had them in effect when these 2 studies were operable. 3 Q Is it your understanding that he was 4 focussing on only strict variance of the voter photo 5 ID law? 6 A You're missing my point. He wasn't 7 focused on any particular state. He was saying of 8 the entire universe of voters from all 50 states, 9 what percentage cited a lack of appropriate ID. 10 And my point is, by its definition that 11 percentage is going to be very small because the 12 denominator includes the vast majority of voters who 13 are not in states with strict voter ID. A tiny 14 percentage of voters are in states with strict photo 15 voter IDs. So, not surprisingly, you're going to 16 find only a tiny percentage of voters cited that as 17 a reason for not voting. 18 Q Page 130, do you see there's the heading 19 Discussion? 20 A I do. 21 Q The author states, "The experience of 22 individuals at the polls on election day suggest 23 that there is much less to the voter identification 24 controversy than appears in the pages of the court 25 decisions of the debates and public forums."</p>
<p style="text-align: right;">142</p> <p>1 Do you see all that? 2 A Of course. 3 Q How do you respond to that? 4 A I think I already have. You're dealing 5 with one state, maybe two -- 6 Q Okay. 7 A -- out of the 50 states. 8 And it's not a big population state. 9 So if your denominator is all the voters, 10 you're not going to expect anybody, tiny percentage 11 to be affected by voter photo ID, because only a 12 tiny percentage of voters are even covered by voter 13 photo ID. 14 And as I said, these are not the best 15 elections to look at. It's what -- it's what he had 16 available to him at the time that he was doing this 17 study. 18 We have much better evidence later on 19 which shows much bigger effects. 20 Q Okay. And your understanding, then, is 21 that the 2006 and 2008 studies referenced by 22 Dr. Ansolabehere in this article focused only on 23 Indiana? 24 A They can only focus on states that had 25 strict voter photo ID laws. And there were one,</p>	<p style="text-align: right;">144</p> <p>1 Do you see that sentence? 2 A I do. 3 Q It's true that you disagree with that, 4 that you think there is more to it than this author 5 is saying? 6 A Well, this author -- what he says is 7 obsolete. It's just not up to date in terms of a 8 totally different universe with respect to voter 9 photo ID laws after this study was taken. 10 And if you go on a little further, it 11 says, "A majority of Americans say that voter fraud 12 is common, but voter identification laws and 13 practices has little effect on those beliefs." 14 So it's also saying the justification for 15 these laws, based on what he saw at the time, had no 16 basis. 17 Q And so I'm seeing a little bit of a -- I 18 don't know how to characterize it. But you relied 19 on a 2008 survey in your work in this case. 20 Correct? 21 A Because that was what was available to the 22 legislature at the time. 23 I have also, as I have testified, looked 24 at more recent studies which show even greater 25 effects of photo voter ID.</p>

<p style="text-align: right;">145</p> <p>1 Q But those studies you did not talk about</p> <p>2 in your expert work in this case.</p> <p>3 A I've talked about them in response to your</p> <p>4 questions. But I put the 2008 study, which shows</p> <p>5 significant effects, because that was available when</p> <p>6 the legislature made its 2011 decisions, plus lots</p> <p>7 of information was directly presented to them saying</p> <p>8 the same thing as what this study indicates.</p> <p>9 Q Is it fair to say you will not be in this</p> <p>10 case relying on any survey of the performance of</p> <p>11 American elections after the 2008 survey?</p> <p>12 A That's not fair. You brought it up. It's</p> <p>13 become an issue in the case. Not necessarily for</p> <p>14 what happened in 2011, but for the consequences, if</p> <p>15 that becomes an issue in the case, I may well be,</p> <p>16 since you asked me about it, talking about</p> <p>17 subsequent surveys.</p> <p>18 Q I guess how would it be relevant, though,</p> <p>19 to your analysis of the intent of the legislature to</p> <p>20 look at subsequent surveys?</p> <p>21 A It wouldn't be relevant, in my mind. But</p> <p>22 your experts have looked at things subsequent to the</p> <p>23 adoption of the law. And you raised this survey as</p> <p>24 kind of presenting evidence that voter photo ID is</p> <p>25 not a problem.</p>	<p style="text-align: right;">147</p> <p>1 be of putting one into place, which they did in</p> <p>2 2011.</p> <p>3 Q Are you aware of any Wisconsin-specific</p> <p>4 survey that touches upon this topic of deterrence of</p> <p>5 minorities from voting due to a voter photo ID law?</p> <p>6 A You mean subsequent to the adoption of the</p> <p>7 voter photo ID law in Wisconsin?</p> <p>8 Q Yes.</p> <p>9 A I believe it's only been used in a couple</p> <p>10 of elections. One was an off year, and one was a</p> <p>11 primary. And I don't believe any of these surveys</p> <p>12 studied the Wisconsin 2015 election or the Wisconsin</p> <p>13 2016 primary.</p> <p>14 So at this point I'm not aware of any</p> <p>15 studies that look at the deterrence effect in those</p> <p>16 two elections.</p> <p>17 But we do know for certain that there was</p> <p>18 some voters disenfranchised in those elections by</p> <p>19 the voter photo ID law specifically. We don't know</p> <p>20 the number because all the information is not</p> <p>21 available. But we know there were some.</p> <p>22 Q Skipping ahead to Page 34 of the report.</p> <p>23 The first full paragraph on that page states, "It is</p> <p>24 telling that Wisconsin only provided a mechanism by</p> <p>25 which voters can obtain a, quote/unquote, free ID in</p>
<p style="text-align: right;">146</p> <p>1 So if that becomes an issue, and it then</p> <p>2 becomes relevant for me to present some of the</p> <p>3 testimony we've talked about this afternoon -- I'm</p> <p>4 not saying I will, but I'm not saying I won't.</p> <p>5 Q Okay. All right. We can set that one,</p> <p>6 Exhibit 3, to the side.</p> <p>7 All right. So Table 12 again on Page 30</p> <p>8 of your report, did that survey study Wisconsin at</p> <p>9 all?</p> <p>10 A It did.</p> <p>11 Q It did?</p> <p>12 A Of course.</p> <p>13 Q Okay. How could it, though, when</p> <p>14 Wisconsin had not passed -- implemented a voter ID</p> <p>15 lawyer?</p> <p>16 A These are -- this is like this study.</p> <p>17 These are nationwide results. They are not limited</p> <p>18 to only those states that had strict voter photo ID</p> <p>19 laws.</p> <p>20 Q So you're drawing -- your opinion is drawn</p> <p>21 from not Wisconsin-specific survey but a nationwide</p> <p>22 survey.</p> <p>23 A It can't be, since at that time Wisconsin</p> <p>24 did not have a voter photo ID law in place.</p> <p>25 But this shows what the consequences would</p>	<p style="text-align: right;">148</p> <p>1 2014 after being forced to do so by Wisconsin</p> <p>2 Supreme Court decision that made no-cost</p> <p>3 documentation a condition of the implementation of</p> <p>4 the voter photo ID law."</p> <p>5 Do you see that sentence?</p> <p>6 A Yes.</p> <p>7 Q Is that factually accurate that --</p> <p>8 A I believe it is. I believe until the</p> <p>9 Wisconsin Supreme Court decision, they did not have</p> <p>10 in place the same petition process. And I haven't</p> <p>11 seen anything, any files on the petition process,</p> <p>12 prior to that decision.</p> <p>13 Q Okay. So it's your position that from</p> <p>14 July -- from 2011, mid 2011, I believe it's July, up</p> <p>15 until 2014, there was no free ID program in</p> <p>16 Wisconsin?</p> <p>17 A I didn't say that.</p> <p>18 Q Okay.</p> <p>19 A That's why I put free --</p> <p>20 Q In quotes?</p> <p>21 A -- in quotes.</p> <p>22 Because the idea itself didn't necessarily</p> <p>23 cost you. You couldn't charge for the ID. I mean,</p> <p>24 you know, as we discussed. That would have been,</p> <p>25 you know, a red-flag signal on this law.</p>



<p style="text-align: right;">149</p> <p>1 But, underlying documents cost. And</p> <p>2 that's what -- why you have this petition process.</p> <p>3 Q Okay. So the quotation marks around the</p> <p>4 word "free" are very important to your analysis?</p> <p>5 A Yes. I even say, no-cost documentation.</p> <p>6 I don't say no-cost IDs.</p> <p>7 Q Okay.</p> <p>8 Page 35, you talk about a FoodShare bill?</p> <p>9 A Yes.</p> <p>10 Q What does this have to do with anything?</p> <p>11 A I think it is essential to the whole issue</p> <p>12 here. I mean, it goes right to the heart of intent.</p> <p>13 Q Okay.</p> <p>14 A If, in fact, the intent had nothing to do</p> <p>15 with race but had to do with increasing confidence</p> <p>16 in the elections, deterring voter fraud, there would</p> <p>17 have been absolutely no reason not to allow a photo</p> <p>18 ID for the FoodShare program to count for voting.</p> <p>19 Not only didn't they authorize this, but</p> <p>20 the Republicans in the legislature explicitly</p> <p>21 rejected an amendment to authorize, under this law</p> <p>22 that they were working on, photo IDs for food stamps</p> <p>23 for voting.</p> <p>24 I cannot think of an explanation for that,</p> <p>25 other than the fact that the FoodShare program is</p>	<p style="text-align: right;">151</p> <p>1 A It doesn't matter to my analysis. What</p> <p>2 matters to my analysis is while they were</p> <p>3 considering it and while it still could have passed,</p> <p>4 they rejected the idea that if we establish this,</p> <p>5 you can use it for voting.</p> <p>6 Q So you --</p> <p>7 A They may have rejected it for entirely</p> <p>8 other reasons, but that's irrelevant to how this</p> <p>9 bears upon my intent analysis.</p> <p>10 Q So it's your position that a bill that the</p> <p>11 legislature failed to enact in 2015 bears upon</p> <p>12 whether the legislature intentionally discriminated</p> <p>13 on the basis of race in 2011?</p> <p>14 A Absolutely. Because it goes to the heart</p> <p>15 of the issue. Are you really concerned with voter</p> <p>16 fraud or confidence, or are you really concerned</p> <p>17 with a law that has a particularized impact on</p> <p>18 limiting minority and voter opportunity -- minority</p> <p>19 voter opportunities?</p> <p>20 If your only concern was voter confidence</p> <p>21 and fraud, then certainly you would have allowed, if</p> <p>22 you established it, food stamp photo IDs to be used</p> <p>23 for voting.</p> <p>24 Q Isn't that quite attenuated?</p> <p>25 A I think it's direct, right on point. I</p>
<p style="text-align: right;">150</p> <p>1 overwhelmingly minority. As I point out on Table</p> <p>2 36. You've got non-Hispanic blacks, 365 percent</p> <p>3 higher than non-Hispanic whites in participation in</p> <p>4 food aid. Hispanics 241 percent higher.</p> <p>5 It certainly can't be justified by a lack</p> <p>6 of security of these IDs. You've got to go</p> <p>7 through -- you know, you're giving them money, in</p> <p>8 effect. You have to go through an incredibly</p> <p>9 exacting process to get one of these IDs, including</p> <p>10 income statements, expense statements. You actually</p> <p>11 have to have an interview. You actually have to</p> <p>12 sign up for an employment program.</p> <p>13 So it seems to me not just not including</p> <p>14 this but rejecting it is a clear indication of the</p> <p>15 racial intent behind the law. Because whether or</p> <p>16 not you actually saw these statistics, it's</p> <p>17 certainly common knowledge that minorities are</p> <p>18 poorer than whites and minorities are greater</p> <p>19 recipients of welfare.</p> <p>20 In fact, that's a common argument you hear</p> <p>21 made all the time.</p> <p>22 Q But the legislature didn't pass the</p> <p>23 FoodShare photo ID bill.</p> <p>24 A It doesn't matter.</p> <p>25 Q It doesn't?</p>	<p style="text-align: right;">152</p> <p>1 don't see how -- it would be hard to devise a more</p> <p>2 on-point test. We have this totally secure ID, far</p> <p>3 more secure than other IDs that you've authorized</p> <p>4 for voting and, yet, you reject the idea that this</p> <p>5 can be used for voting.</p> <p>6 And, oh, by the way, blacks are almost</p> <p>7 five times more likely to have such IDs, and</p> <p>8 Hispanics are almost four times more likely to have</p> <p>9 such IDs.</p> <p>10 Unless, again, you're thinking the</p> <p>11 legislature is living on the moon, they know this.</p> <p>12 Q You agree the legislature did not pass</p> <p>13 this FoodShare law?</p> <p>14 A Understood. I'm not trying to analyze the</p> <p>15 FoodShare bill as a FoodShare bill. I am analyzing</p> <p>16 the FoodShare bill for the insight that it provides</p> <p>17 on the decision-making of the legislature regarding</p> <p>18 photo voter ID.</p> <p>19 Q Page 38 at the very top.</p> <p>20 A Sure.</p> <p>21 Q Talks about the exclusion of</p> <p>22 post-secondary technical schools?</p> <p>23 A Yes.</p> <p>24 Q And you now know that by administrative</p> <p>25 rule, that is a permissible ID?</p>

<p style="text-align: right;">153</p> <p>1 <b>A I do. And I commented on that in my</b></p> <p>2 <b>rebuttal report.</b></p> <p>3 Q Okay. And so do you agree, then, that</p> <p>4 African-Americans and Hispanics who you believe are</p> <p>5 more likely to be at those institutions now have yet</p> <p>6 another alternative for ID?</p> <p>7 <b>A For a limited number. But it's not</b></p> <p>8 <b>because of anything from the legislature did. The</b></p> <p>9 <b>legislature didn't decide, Oh, my gosh, we made a</b></p> <p>10 <b>mistake here. As you said, it was something that</b></p> <p>11 <b>came out of the GAB, not the legislature.</b></p> <p>12 <b>So, again, what we see here is a common</b></p> <p>13 <b>pattern of action, fairly obvious action, to</b></p> <p>14 <b>ameliorate the effects on minorities coming from</b></p> <p>15 <b>something external to the legislature in three</b></p> <p>16 <b>specific examples that we have now seen.</b></p> <p>17 Q The legislature has the ability to stop</p> <p>18 rule-making that it believes is inconsistent with</p> <p>19 the law. Correct?</p> <p>20 <b>A I would imagine if -- by a vote of the</b></p> <p>21 <b>legislature they could have done that.</b></p> <p>22 Q But they didn't stop the technical college</p> <p>23 rule?</p> <p>24 <b>A I think that would have, you know, greatly</b></p> <p>25 <b>enhanced the notion that they were intentionally</b></p>	<p style="text-align: right;">155</p> <p>1 this section of the report, any one can be analyzed</p> <p>2 to have a racially discriminatory impact?</p> <p>3 <b>A I believe I analyze if not every single</b></p> <p>4 <b>one, certainly virtually every single one. But in</b></p> <p>5 <b>doing an intent analysis, you don't only analyze</b></p> <p>6 <b>them individually. Because their impact is not only</b></p> <p>7 <b>felt individually; their impact is felt</b></p> <p>8 <b>collectively.</b></p> <p>9 <b>That is, voters have to face all the</b></p> <p>10 <b>rules, not just one.</b></p> <p>11 Q So in doing legislative intent analysis,</p> <p>12 is it commonplace to look at the motivations for</p> <p>13 bills that were passed by different legislatures,</p> <p>14 different members of the legislature?</p> <p>15 <b>A Absolutely. Because we're talking about</b></p> <p>16 <b>the same political party passing these bills.</b></p> <p>17 <b>In other words, remember the rationale</b></p> <p>18 <b>here is, by limiting the votes of African-Americans</b></p> <p>19 <b>and Hispanics, for all the reasons we've laid out,</b></p> <p>20 <b>you're deriving political benefits to Republicans.</b></p> <p>21 <b>And it's not like it was a Republican legislature</b></p> <p>22 <b>that passed one and then a Democratic legislature</b></p> <p>23 <b>that passed another. These were all passed by</b></p> <p>24 <b>Republican legislatures and signed by a Republican</b></p> <p>25 <b>governor.</b></p>
<p style="text-align: right;">154</p> <p>1 <b>discriminating. If they had done something that</b></p> <p>2 <b>blatant, overturned a rule that helped</b></p> <p>3 <b>African-Americans and Hispanics for no good reason,</b></p> <p>4 <b>I think they would have put themselves in a lot of</b></p> <p>5 <b>jeopardy.</b></p> <p>6 Q Page 39, first full paragraph.</p> <p>7 <b>A Yes. Okay.</b></p> <p>8 Q In this section you've gone through</p> <p>9 several different changes in the law. And in this</p> <p>10 sentence, first full paragraph, you say, "Taken</p> <p>11 together, these many restrictions on options to</p> <p>12 register to vote impose disproportionate burdens on</p> <p>13 African-Americans and Hispanics."</p> <p>14 Do you see that?</p> <p>15 <b>A Of course.</b></p> <p>16 Q Is it your opinion that to have the</p> <p>17 discriminatory effect that you believe existed, that</p> <p>18 the laws must be considered together, or can they be</p> <p>19 considered separately from each other?</p> <p>20 <b>A Either way.</b></p> <p>21 Q Okay.</p> <p>22 <b>A You can do it both ways. And I do it both</b></p> <p>23 <b>ways.</b></p> <p>24 Q Okay. So it's your opinion then that any</p> <p>25 one of these particular acts that you outlined in</p>	<p style="text-align: right;">156</p> <p>1 Q And so legislative intent focuses more on</p> <p>2 parties than individual legislators?</p> <p>3 <b>A Not so.</b></p> <p>4 Q No?</p> <p>5 <b>A In this case, it focuses on party. It</b></p> <p>6 <b>could focus on all kinds of different things. But</b></p> <p>7 <b>in this case, we've got to look for a motive as to</b></p> <p>8 <b>why you're getting bill after bill after bill after</b></p> <p>9 <b>bill that poses a disparate burden on minorities.</b></p> <p>10 <b>And in this case, the motivation, for all the</b></p> <p>11 <b>reasons I've laid out, is the direct link between</b></p> <p>12 <b>partisan advantage and discriminatory legislation</b></p> <p>13 <b>with respect to minorities.</b></p> <p>14 <b>And we also, as we have gone over, have</b></p> <p>15 <b>direct evidence of that.</b></p> <p>16 Q Is that consistent with the Arlington</p> <p>17 Heights framework?</p> <p>18 <b>A Absolutely consistent with the Arlington</b></p> <p>19 <b>Heights framework. It asks you to look at sequence</b></p> <p>20 <b>of events. It asks you to look at contemporary</b></p> <p>21 <b>statements. Of course it is very much consistent</b></p> <p>22 <b>with the Arlington Heights.</b></p> <p>23 Q It's not too much cobbling together?</p> <p>24 <b>A No. I don't think you're cobbling</b></p> <p>25 <b>together at all. Because you've got these common --</b></p>

<p style="text-align: right;">157</p> <p>1 <b>many common threads that we've talked about.</b></p> <p>2 Q Page 39 you discuss the corroboration</p> <p>3 option that was -- no longer exists. Correct?</p> <p>4 A <b>That's right.</b></p> <p>5 Q So this, the last paragraph on Page 39, is</p> <p>6 this really all the analysis you're doing with</p> <p>7 regard to corroboration, or is there more analysis?</p> <p>8 A <b>I don't know of any more, and I don't see</b></p> <p>9 <b>anything from your experts that I had to respond to</b></p> <p>10 <b>on this.</b></p> <p>11 Q Okay. So there's no other evidence you're</p> <p>12 relying upon as to corroboration, other than this</p> <p>13 single paragraph, what's stated there on Page --</p> <p>14 A <b>I am not aware of any other evidence, as I</b></p> <p>15 <b>said, I didn't see anything from your experts that I</b></p> <p>16 <b>needed to respond to. So unless something new comes</b></p> <p>17 <b>across, and as I said we're getting new things all</b></p> <p>18 <b>the time, this is what I have.</b></p> <p>19 Q So in this paragraph on Page 39, you say,</p> <p>20 "According to internal GAB e-mails, a total of</p> <p>21 35,332 Wisconsin citizens had registered through</p> <p>22 corroboration from 2006 through October 2012."</p> <p>23 Do you see that?</p> <p>24 A <b>I do.</b></p> <p>25 Q Do you know what the total number of</p>	<p style="text-align: right;">159</p> <p>1 of how many African-Americans use the corroboration</p> <p>2 option. Correct?</p> <p>3 A <b>I think I say that right in the paragraph.</b></p> <p>4 Q Okay. Page 40. You discuss the</p> <p>5 elimination of the requirement of special</p> <p>6 registration deputies at high schools?</p> <p>7 A <b>Yes.</b></p> <p>8 Q And did you have any data that show how</p> <p>9 many African-American or Hispanic voters use an SRD</p> <p>10 at a public high school?</p> <p>11 A <b>We don't know, because you don't register</b></p> <p>12 <b>by race in Wisconsin. So, again, which is perfectly</b></p> <p>13 <b>acceptable practice, you've got to do some</b></p> <p>14 <b>inferring. And we can see African-Americans are</b></p> <p>15 <b>overrepresented among public high school students.</b></p> <p>16 Q But we don't know if they were more likely</p> <p>17 to use that option to register. Correct?</p> <p>18 A <b>Well, more of them would have had that</b></p> <p>19 <b>option available relative to whites. But because we</b></p> <p>20 <b>don't have registration by race, we don't have the</b></p> <p>21 <b>final statistics on that, that's correct.</b></p> <p>22 Q Okay. Page 41, there is a -- the first</p> <p>23 paragraph you state, "In addition, restrictions on</p> <p>24 registration by college and university students have</p> <p>25 a specific disparate impact on potential</p>
<p style="text-align: right;">158</p> <p>1 citizens who had registered in that same period is?</p> <p>2 A <b>Oh, it's much, much larger.</b></p> <p>3 Q Are we talking millions?</p> <p>4 A <b>Could well be.</b></p> <p>5 Q Okay. But you don't know?</p> <p>6 A <b>I don't have the number right off the top</b></p> <p>7 <b>of my head, no. But it's much larger than this.</b></p> <p>8 Q Did you look at the number?</p> <p>9 A <b>No. Because my concern here was not to</b></p> <p>10 <b>establish this as a percentage. Because I don't</b></p> <p>11 <b>believe you need to have some percentage threshold</b></p> <p>12 <b>for a law to have a discriminatory effect.</b></p> <p>13 As Justice Easterbrook said, voting is</p> <p>14 personal. And even if it has an effect on a very</p> <p>15 small number of Wisconsin citizens, it still impacts</p> <p>16 the right to vote.</p> <p>17 And so my concern was just to document the</p> <p>18 number, not necessarily the percentage. And I</p> <p>19 certainly recognize that's a very small percentage,</p> <p>20 but it's a lot of people.</p> <p>21 Q So of that 35,332, how many were white?</p> <p>22 A <b>I think I said statistics are not</b></p> <p>23 <b>available by race. So we had to do some inferring</b></p> <p>24 <b>from socio-economic standing.</b></p> <p>25 Q Okay. So you don't have direct evidence</p>	<p style="text-align: right;">160</p> <p>1 African-American voters."</p> <p>2 Do you see that?</p> <p>3 A <b>Yeah.</b></p> <p>4 Q You did not have data with regard to what</p> <p>5 African-American voters were impacted by these</p> <p>6 changes?</p> <p>7 A <b>You can't, because we don't know -- we</b></p> <p>8 <b>don't have registration by race. Again, we've got</b></p> <p>9 <b>to look at the populations directly affected. And I</b></p> <p>10 <b>think you see a pattern here.</b></p> <p>11 Q Right. I mean, I'm going to keep asking</p> <p>12 the questions. But --</p> <p>13 A <b>Right. And I'll give you the same answer.</b></p> <p>14 <b>We don't have registration by race in Wisconsin,</b></p> <p>15 <b>like we did in North Carolina.</b></p> <p>16 Q Wouldn't that be the best evidence of</p> <p>17 these racial impacts?</p> <p>18 A <b>That would. But it doesn't mean that this</b></p> <p>19 <b>evidence isn't good evidence, particularly when the</b></p> <p>20 <b>pattern is so common.</b></p> <p>21 You know, if you cut into a pie five times</p> <p>22 or six times and you find it's cherry every time,</p> <p>23 you might think, yeah, I'm dealing with a cherry pie</p> <p>24 here.</p> <p>25 Q Are we cutting into the same pie each time</p>

<p style="text-align: right;">161</p> <p>1 here?</p> <p>2 <b>A Yeah. You're cutting into the pie of</b></p> <p>3 <b>potential registrants.</b></p> <p>4 Q Okay. Second paragraph on Page 41.</p> <p>5 You're talking about the abrogation of a Madison</p> <p>6 ordinance?</p> <p>7 <b>A Correct.</b></p> <p>8 Q Is this the only analysis of that law</p> <p>9 change that you've done for this case?</p> <p>10 <b>A Yes. Because, again, I don't have</b></p> <p>11 <b>registration on race. But again we see the same</b></p> <p>12 <b>pattern. You're targeting a group that is very</b></p> <p>13 <b>disproportionately minority.</b></p> <p>14 Q Let's flip to Page 46. And here you talk</p> <p>15 about the change from a ten-day durational residency</p> <p>16 requirement to a 28-day.</p> <p>17 <b>A Right.</b></p> <p>18 Q Do you know what the requirement is here</p> <p>19 in Maryland where you vote?</p> <p>20 <b>A I don't. I haven't registered in Maryland</b></p> <p>21 <b>since the '70s.</b></p> <p>22 Q Okay. All right. Why do we have</p> <p>23 durational residency requirements at all?</p> <p>24 <b>A Well, I know what some of the</b></p> <p>25 <b>justifications for durational residency requirements</b></p>	<p style="text-align: right;">163</p> <p>1 <b>A Right.</b></p> <p>2 Q This -- on Page 47, is this the only</p> <p>3 opinion you intend to offer in this case regarding</p> <p>4 that challenge?</p> <p>5 <b>A Unless I have to respond to something</b></p> <p>6 <b>presented by the state, that's correct. Again, we</b></p> <p>7 <b>don't have voting by race.</b></p> <p>8 Q Okay. So the next section of your report</p> <p>9 talks about procedural and substantive deviations.</p> <p>10 Correct?</p> <p>11 <b>A That's right.</b></p> <p>12 Q Tell me, what are procedural deviations</p> <p>13 and what are substantive deviations?</p> <p>14 <b>A Procedural have to do with the mechanisms</b></p> <p>15 <b>and manner by which a law is passed. Substantive</b></p> <p>16 <b>have to do with the changes from the status quo that</b></p> <p>17 <b>the law represents.</b></p> <p>18 Q You concluded that procedural deviations</p> <p>19 did occur in the passage of these challenge laws.</p> <p>20 Correct?</p> <p>21 <b>A Right. But that was not my main point,</b></p> <p>22 <b>obviously. Since the Republicans controlled the</b></p> <p>23 <b>matter and could get what they want.</b></p> <p>24 Q So you have -- by number you come up --</p> <p>25 you go through a number of what you perceive as</p>
<p style="text-align: right;">162</p> <p>1 <b>are. I'm not sure I necessarily agree with them or</b></p> <p>2 <b>find them necessary. Particularly in a state that</b></p> <p>3 <b>has, you know, same day.</b></p> <p>4 Q So what are the justifications that you</p> <p>5 know?</p> <p>6 <b>A Administrative convenience, to give the</b></p> <p>7 <b>administrators more time to process whatever it</b></p> <p>8 <b>needs to be processed. But, obviously, you've got</b></p> <p>9 <b>good processing in a state with same-day</b></p> <p>10 <b>registration.</b></p> <p>11 <b>Maybe to establish a certain degree of</b></p> <p>12 <b>attachment to the state before having an opportunity</b></p> <p>13 <b>to vote. Those are some of the justifications I've</b></p> <p>14 <b>heard.</b></p> <p>15 Q And then this Page 46, is this the only</p> <p>16 place in any of your reports that you've analyzed</p> <p>17 this durational residency requirement?</p> <p>18 <b>A I believe that's right.</b></p> <p>19 Q Okay. And do you intend to offer any</p> <p>20 further expert opinions on that requirement?</p> <p>21 <b>A Only if it's brought up by the state.</b></p> <p>22 Q Okay. Page 47, at the top you talk about</p> <p>23 fixing absentee ballot mistakes?</p> <p>24 <b>A Right.</b></p> <p>25 Q And Act 227?</p>	<p style="text-align: right;">164</p> <p>1 procedural deviations.</p> <p>2 <b>A Procedural and substantive.</b></p> <p>3 Q And substantive. The first of which is</p> <p>4 that Republicans in the legislature introduced</p> <p>5 legislation late in sessions with little time for</p> <p>6 debate, discussion, and analysis. Correct?</p> <p>7 <b>A Yes.</b></p> <p>8 Q Is that a procedural or a substantive</p> <p>9 deviation?</p> <p>10 <b>A I think it's a little bit of both.</b></p> <p>11 Q Okay. Could you explain?</p> <p>12 <b>A Yeah. It is procedural in the sense that</b></p> <p>13 <b>while it is not a violation of rules, it does have</b></p> <p>14 <b>an impact procedurally to do that in terms of what</b></p> <p>15 <b>you can go through.</b></p> <p>16 <b>And it's definitely substantive, because</b></p> <p>17 <b>as the Republican says, it doesn't give people time</b></p> <p>18 <b>to comment. It doesn't give you time to adequately</b></p> <p>19 <b>examine the implications. It's the kind of thing</b></p> <p>20 <b>you do when you want to rush something through with</b></p> <p>21 <b>limited scrutiny.</b></p> <p>22 Q So in the Arlington Heights analysis,</p> <p>23 introducing legislation late is considered a</p> <p>24 procedural or substantive deviation?</p> <p>25 <b>A I think so. Particularly when it involves</b></p>

<p style="text-align: right;">165</p> <p>1 the fundamental right to vote. Of all things that</p> <p>2 ought to be very, very seriously considered, that</p> <p>3 ought to be weighed with great seriousness, is the</p> <p>4 fundamental right to vote. And I've seen commentary</p> <p>5 on that from legislators in other states talking</p> <p>6 about the extended process that they felt was</p> <p>7 necessary to go through before you change things</p> <p>8 implicating the right to vote.</p> <p>9 This is not laws on the color of the paint</p> <p>10 of state house offices. This involves what the</p> <p>11 Supreme Court has said is the foundational right of</p> <p>12 Americans.</p> <p>13 Q Then the second procedural or substantive</p> <p>14 deviation that you highlight is the magnitude of</p> <p>15 measures that were passed?</p> <p>16 A That's correct.</p> <p>17 Q So why would the number of laws that were</p> <p>18 passed show a procedural substantive deviation?</p> <p>19 A Well, again, it's not illegal to pass such</p> <p>20 measures. But the fact that this makes Wisconsin</p> <p>21 such an outlier, it's very unusual. It's</p> <p>22 deviational, if that's a word, to in such a brief</p> <p>23 period of time adopt so many measures directly</p> <p>24 implicating the right to vote. You know, even more</p> <p>25 so than North Carolina, which had been under the</p>	<p style="text-align: right;">167</p> <p>1 before.</p> <p>2 Q Grothman?</p> <p>3 A And he's not a legislator, but a staffer.</p> <p>4 Q Okay. So those are the three, Schultz,</p> <p>5 Grothman, Aulbaugh?</p> <p>6 A From within Wisconsin. We talked about</p> <p>7 other nationally -- national figures making similar</p> <p>8 statements.</p> <p>9 Q No other Wisconsin?</p> <p>10 A Not that I am aware of at this time. But</p> <p>11 as I said, this has been an incredible moving</p> <p>12 target.</p> <p>13 Q Okay. On Page 53, you talk about examples</p> <p>14 that are commonly raised for use of an ID card.</p> <p>15 Correct?</p> <p>16 A Yes.</p> <p>17 Q One of which is getting married?</p> <p>18 A Yes.</p> <p>19 Q And you state, "Although county practices</p> <p>20 may vary under Wisconsin state law, birth</p> <p>21 certificate but not a photo ID is required for</p> <p>22 obtaining a marriage license."</p> <p>23 Do you see that?</p> <p>24 A Correct.</p> <p>25 Q Are you aware of any jurisdictions in</p>
<p style="text-align: right;">166</p> <p>1 microscope for doing what they did.</p> <p>2 And, obviously, as we talked about, it is</p> <p>3 substantive. Because these are cumulative.</p> <p>4 Q And then the third procedural or</p> <p>5 substantive deviation you highlight is that</p> <p>6 Republicans gained unified control of state</p> <p>7 government in 2010?</p> <p>8 A Right.</p> <p>9 Q How would that be considered a deviation</p> <p>10 of any sort?</p> <p>11 A Well, it is a deviation from the past</p> <p>12 politics of the state.</p> <p>13 Again, I'm not saying it's illegal or</p> <p>14 anything like that. But it's important because it</p> <p>15 helps explain the timing of these laws.</p> <p>16 Q We are now going to move to Page 51 that</p> <p>17 we talked about, the Dale Schultz quote --</p> <p>18 A Yes.</p> <p>19 Q -- earlier.</p> <p>20 A Yes, we have.</p> <p>21 Q Do you have -- are there statements by any</p> <p>22 other Wisconsin Republican legislator that you're</p> <p>23 relying upon to show contemporaneous viewpoints of</p> <p>24 decision-makers?</p> <p>25 A Yes. Grothman. We've talked about that</p>	<p style="text-align: right;">168</p> <p>1 Wisconsin that do require a photo ID card to get a</p> <p>2 marriage license?</p> <p>3 A I think there might be some. But, you</p> <p>4 know, I haven't combed through every single</p> <p>5 jurisdiction. But I wouldn't be surprised that</p> <p>6 there was.</p> <p>7 Q Let show you --</p> <p>8 A -- let me finish. That's why I said</p> <p>9 county practices vary.</p> <p>10 MR. KAWSKI: Here's another exhibit.</p> <p>11 (Lichtman Deposition Exhibit 4 marked for</p> <p>12 identification and is attached to the transcript.)</p> <p>13 Q So this is Exhibit 4. Take a look at it,</p> <p>14 let me know if you've seen it before.</p> <p>15 A I might have. As I said, I looked at some</p> <p>16 of these counties, but I wasn't going to go through</p> <p>17 72 counties in Wisconsin and try to parse out all of</p> <p>18 their laws. Because my basic point was we're</p> <p>19 talking about state law, and state law does not</p> <p>20 require it.</p> <p>21 Q So this is, I will represent to you, a</p> <p>22 printout from the Milwaukee County website. If you</p> <p>23 go to Page 3, there is a heading Marriage License</p> <p>24 Application Requirements.</p> <p>25 Do you see that?</p>



<p style="text-align: right;">169</p> <p>1 <b>A Yes.</b></p> <p>2 Q And then second bullet point below that</p> <p>3 heading, "Each applicant must show valid photo ID,</p> <p>4 such as valid driver's license."</p> <p>5 Do you see that?</p> <p>6 <b>A I see that.</b></p> <p>7 Q So marriage is an important right, just</p> <p>8 like voting. Correct?</p> <p>9 <b>A Yes.</b></p> <p>10 Q It's a fundamental right?</p> <p>11 <b>A Yes.</b></p> <p>12 Q So why do you think Milwaukee County is</p> <p>13 requiring a photo ID to exercise that fundamental</p> <p>14 right?</p> <p>15 <b>A I'm not sure they are.</b></p> <p>16 Q No?</p> <p>17 <b>A Let me tell you why.</b></p> <p>18 Q Okay.</p> <p>19 <b>A First of all, I don't know what a valid</b></p> <p>20 <b>photo ID is.</b></p> <p>21 Q Right. I don't, either.</p> <p>22 <b>A It could be a vastly wider array. Could</b></p> <p>23 <b>be you know. My AU faculty ID. They don't specify.</b></p> <p>24 <b>So this is not comparable to the Wisconsin</b></p> <p>25 <b>voting photo ID law, which is extremely restrictive.</b></p>	<p style="text-align: right;">171</p> <p>1 <b>here.</b></p> <p>2 Q Okay. Next exhibit is going to be the</p> <p>3 rebuttal report.</p> <p>4 <b>A Okay.</b></p> <p>5 MR. KAWSKI: So if you want to mark that</p> <p>6 one Exhibit 5.</p> <p>7 (Lichtman Deposition Exhibit 5 marked for</p> <p>8 identification and is attached to the transcript.)</p> <p>9 MR. SPIVA: While we mark this, do you</p> <p>10 mind if we take a short break?</p> <p>11 MR. KAWSKI: Sure.</p> <p>12 (A recess was taken.)</p> <p>13 BY MR. KAWSKI:</p> <p>14 Q So please take a look at Exhibit 5 and let</p> <p>15 me know what that is.</p> <p>16 <b>A Oh, okay. This just blacks out names.</b></p> <p>17 <b>Right.</b></p> <p>18 Q Yes.</p> <p>19 <b>A That's fine. I'm just going through it</b></p> <p>20 <b>quickly. This is my rebuttal report. This is</b></p> <p>21 <b>complete.</b></p> <p>22 Q So I did bring -- there were two versions</p> <p>23 that were filed in court.</p> <p>24 <b>A Right.</b></p> <p>25 Q One was the redacted, one was the not</p>
<p style="text-align: right;">170</p> <p>1 <b>Plus, for example, while if you took a</b></p> <p>2 <b>superficial look at the Transportation Security</b></p> <p>3 <b>Agency, you would think you had to bring a photo ID.</b></p> <p>4 <b>But, in fact, there are all kinds of exceptions if</b></p> <p>5 <b>you don't have it.</b></p> <p>6 <b>I have no idea whether there are</b></p> <p>7 <b>exceptions in Milwaukee. There may well be.</b></p> <p>8 Q Wouldn't the fact that it says "valid</p> <p>9 photo ID" suggest that there is a lot of discretion</p> <p>10 in the hands of government as to whether you get a</p> <p>11 marriage certificate or license?</p> <p>12 <b>A There may well be. And that's why I said</b></p> <p>13 <b>there may also be exceptions.</b></p> <p>14 Q Okay.</p> <p>15 <b>A And there often aren't, even when you say</b></p> <p>16 <b>you have to show a photo ID. So you would have to</b></p> <p>17 <b>delve a little more deeply.</b></p> <p>18 Q But you acknowledge, though, that it</p> <p>19 appears Milwaukee County requires a photo ID to get</p> <p>20 a marriage license?</p> <p>21 <b>A That's what it says. But I am not sure in</b></p> <p>22 <b>practice what that means. Let me look at this a</b></p> <p>23 <b>little more and see if there's any further</b></p> <p>24 <b>clarification.</b></p> <p>25 <b>No, there is no further clarification</b></p>	<p style="text-align: right;">172</p> <p>1 redacted.</p> <p>2 <b>A Right.</b></p> <p>3 Q I used the redacted one.</p> <p>4 <b>A So you're not going to ask me about names.</b></p> <p>5 Q No.</p> <p>6 <b>A Okay.</b></p> <p>7 Q So this is your rebuttal report executed</p> <p>8 February 16th, 2016. Correct?</p> <p>9 <b>A Yes.</b></p> <p>10 Q In this case.</p> <p>11 When did you write it?</p> <p>12 <b>A After I saw the report of defendants'</b></p> <p>13 <b>expert.</b></p> <p>14 Q So maybe in January 2016?</p> <p>15 <b>A Well, through February 16th, yeah.</b></p> <p>16 Q When you wrote your initial report, you</p> <p>17 didn't have the information you talk about in this</p> <p>18 report with regard to individual voters who use the</p> <p>19 IDPP?</p> <p>20 <b>A I had no individual voter data.</b></p> <p>21 Q Do you recall when you were provided with</p> <p>22 that individual voter data?</p> <p>23 <b>A Pretty shortly before I finished this</b></p> <p>24 <b>report.</b></p> <p>25 Q Okay. And you were provided that by</p>

<p style="text-align: right;">173</p> <p>1 counsel?</p> <p>2 <b>A Yes.</b></p> <p>3 <b>Q Okay.</b></p> <p>4 <b>A With the stipulation that it had come from</b></p> <p>5 <b>the state.</b></p> <p>6 <b>Q Okay.</b></p> <p>7 <b>A Not that it was something worked up by</b></p> <p>8 <b>counsel.</b></p> <p>9 <b>Q Okay. I'm going to flip you ahead right</b></p> <p>10 <b>away to Page 14, Table 7. I think it touches on an</b></p> <p>11 <b>issue we've talked about already.</b></p> <p>12 <b>A We briefly talked about that, that's</b></p> <p>13 <b>correct.</b></p> <p>14 <b>Q So Table 7, you're summarizing the</b></p> <p>15 <b>percentages of newly issued renewal and duplicate</b></p> <p>16 <b>nondriver IDs that the Wisconsin DMV issued from</b></p> <p>17 <b>July 2011 through September 2015.</b></p> <p>18 <b>A Right. That was the last data I had at</b></p> <p>19 <b>that time. More data is coming in.</b></p> <p>20 <b>Q Right.</b></p> <p>21 <b>A But that's what I had then.</b></p> <p>22 <b>Q So below the table you state, "However,</b></p> <p>23 <b>the vast majority of IDs included in this analysis,</b></p> <p>24 <b>80 percent, are free IDs."</b></p> <p>25 <b>A Right. They're not all free IDs.</b></p>	<p style="text-align: right;">175</p> <p>1 <b>with specificity those percentages.</b></p> <p>2 <b>Q Okay. All right. And we've talked about</b></p> <p>3 <b>how -- you used numbers that were available to you</b></p> <p>4 <b>at the time, and that there are more recent numbers</b></p> <p>5 <b>available. Correct?</b></p> <p>6 <b>A I believe that's right.</b></p> <p>7 <b>Q Okay. And that if you're given the more</b></p> <p>8 <b>recent data, you will form opinions about it?</b></p> <p>9 <b>A Of course. I'm not going to blind myself</b></p> <p>10 <b>to it.</b></p> <p>11 <b>Q Okay. And you have not analyzed any data</b></p> <p>12 <b>about the February 2016 or April 2016 elections?</b></p> <p>13 <b>A Only what I saw in the press. And I was</b></p> <p>14 <b>given one document from Milwaukee for 2015.</b></p> <p>15 <b>Q Okay.</b></p> <p>16 <b>A Which I just got last night.</b></p> <p>17 <b>Q You talk in this report about the Texas</b></p> <p>18 <b>law and the Texas decision by the fifth circuit?</b></p> <p>19 <b>A That's correct.</b></p> <p>20 <b>Q You were an expert in the Texas case?</b></p> <p>21 <b>A Correct.</b></p> <p>22 <b>Q What was your role or area of expertise in</b></p> <p>23 <b>that case?</b></p> <p>24 <b>A It was similar to this one, analyzing</b></p> <p>25 <b>intent.</b></p>
<p style="text-align: right;">174</p> <p>1 <b>Q Okay. So of the total IDs, the number</b></p> <p>2 <b>here in Table 7 is 498,244. Eighty percent of those</b></p> <p>3 <b>were free IDs?</b></p> <p>4 <b>A I believe that's right.</b></p> <p>5 <b>Q Okay. So approximately, in your</b></p> <p>6 <b>estimation, 400,000 free ID cards were issued</b></p> <p>7 <b>between July 2011 and September 2015.</b></p> <p>8 <b>A Approximately. Counting duplicates,</b></p> <p>9 <b>renewals, and new.</b></p> <p>10 <b>And that number of which are free and</b></p> <p>11 <b>which aren't aren't broken down into these separate</b></p> <p>12 <b>three categories. That's why I had to put the</b></p> <p>13 <b>footnote on the bottom, just to make sure I was as</b></p> <p>14 <b>accurate as I could be within the parameters of the</b></p> <p>15 <b>data.</b></p> <p>16 <b>Q Okay. And so I want to ask if the 80</b></p> <p>17 <b>percent free ID, can that be applied to the newly</b></p> <p>18 <b>issued IDs column, meaning 80 percent of the count</b></p> <p>19 <b>for newly issued IDs would be considered free IDs?</b></p> <p>20 <b>A I think I just explained, they didn't</b></p> <p>21 <b>doubly break it down. That is, they didn't break it</b></p> <p>22 <b>down into free and nonfree, and then break it down</b></p> <p>23 <b>into newly, duplicate, and renewal.</b></p> <p>24 <b>So we don't know. It's probably not going</b></p> <p>25 <b>to vary enormously from that, but I can't tell you</b></p>	<p style="text-align: right;">176</p> <p>1 <b>Q Okay. And so you concluded that the Texas</b></p> <p>2 <b>voter ID law was passed with a racially</b></p> <p>3 <b>discriminatory intent?</b></p> <p>4 <b>A I did.</b></p> <p>5 <b>Q And that conclusion has since been vacated</b></p> <p>6 <b>by the fifth circuit?</b></p> <p>7 <b>A Not exactly.</b></p> <p>8 <b>Q No? Okay. What's your understanding?</b></p> <p>9 <b>A I will tell you my understanding. Again</b></p> <p>10 <b>not being a lawyer. But my understanding is that</b></p> <p>11 <b>the fifth circuit didn't refer to me at all or any</b></p> <p>12 <b>expert work. There were some legal issues in the</b></p> <p>13 <b>district court which found discriminatory intent.</b></p> <p>14 <b>And they remanded the issue back to the district</b></p> <p>15 <b>court for reconsideration of the intent issue in</b></p> <p>16 <b>light, like I said, not of anything I said, but in</b></p> <p>17 <b>light of these legal issues.</b></p> <p>18 <b>Q And so they remanded it. But then</b></p> <p>19 <b>subsequent to that the entire fifth circuit is now</b></p> <p>20 <b>taking up the case?</b></p> <p>21 <b>A That is correct.</b></p> <p>22 <b>Q So your -- the opinion that incorporated</b></p> <p>23 <b>your analysis has been vacated. Correct?</b></p> <p>24 <b>A I don't know what you mean by that. My</b></p> <p>25 <b>understanding is it was remanded back to the</b></p>

<p style="text-align: right;">177</p> <p>1 <b>district. I don't know what the legal posture is,</b>  2 <b>since the fifth circuit simply said we are going to</b>  3 <b>look at it.</b>  4 Q Okay. But to date you haven't been asked  5 to testify again in Texas?  6 A <b>No. Because it's up before the en banc</b>  7 <b>fifth circuit and I don't believe they're taking</b>  8 <b>testimony.</b>  9 Q And so no one has asked you to prepare any  10 supplemental reports in Texas?  11 A <b>No, no one has asked me to prepare</b>  12 <b>anything. That may happen depending on, you know,</b>  13 <b>where all of this goes. And it could be -- things</b>  14 <b>in Texas move slowly.</b>  15 Q Right.  16 A <b>It could be a long time.</b>  17 Q Right. On Pages 11 and 12 of this  18 rebuttal, you talk about the usage of in-person  19 absentee voting. Correct?  20 A <b>Yes.</b>  21 Q And you conclude that the rate of  22 in-person absentee voting went up in Madison and  23 Milwaukee between 2010 and 2014. Correct?  24 A <b>Absolutely.</b>  25 Q Okay. And so that -- that is the period</p>	<p style="text-align: right;">179</p> <p>1 (Lichtman Deposition Exhibit 6 and Exhibit  2 7 marked for identification and are attached to the  3 transcript.)  4 Q So take a look at Exhibit 6 and Exhibit 7.  5 A <b>Do you want me to look at the whole --</b>  6 <b>there's a lot of pages here.</b>  7 Q You can flip through. If you want to.  8 A <b>I really don't want to.</b>  9 Q Marquette was Exhibit 6.  10 A <b>I am familiar with this poll, yes. So if</b>  11 <b>you want to direct me to anything within the poll,</b>  12 <b>that's fine.</b>  13 Q Okay.  14 A <b>I don't need to read through the whole</b>  15 <b>thing.</b>  16 Q Sure. What is Exhibit 6?  17 A <b>It is a Marquette Law School Poll</b>  18 <b>conducted between October 23rd and October 26, 2014.</b>  19 <b>What I don't know and I'm not going to</b>  20 <b>take the time at the moment is what aspects of the</b>  21 <b>poll -- it was a very big poll -- are included in</b>  22 <b>this particular exhibit.</b>  23 Q Okay. If you'll flip to the page that has  24 Question Number 18.  25 A <b>Sure. I'm there.</b></p>
<p style="text-align: right;">178</p> <p>1 of time that we're talking about here when these  2 laws, with the exception of the voter ID law, were  3 in effect?  4 A <b>I believe that's right. There was a law I</b>  5 <b>think that was dated to 2014. I can't swear whether</b>  6 <b>it was in effect or not. But basically that's</b>  7 <b>correct. With the exception of voter photo ID.</b>  8 Q Okay.  9 A <b>But, of course, that was not what I was</b>  10 <b>analyzing. You understand that.</b>  11 Q Right. I understand that.  12 A <b>Okay. Fair enough.</b>  13 Q All right. I don't really have any other  14 questions about that report.  15 A <b>Okay.</b>  16 Q But I do have a couple more exhibits that  17 I may as well just bring out together.  18 A <b>Sure.</b>  19 Q We've talked a little bit about them.  20 A <b>That's fine.</b>  21 Q All right.  22 A <b>It looks like it's those polls.</b>  23 Q Yeah, those polls. So one is the  24 Marquette poll, and the other is the Pew Research  25 Center poll.</p>	<p style="text-align: right;">180</p> <p>1 Q Okay. And you see, "Do you favor/oppose  2 requiring a government-issued photo ID to vote"?  3 A <b>I do.</b>  4 Q And you see that 60.4 percent of Wisconsin  5 likely voters who are polled favored such a  6 requirement?  7 A <b>Correct.</b>  8 Q And 36 percent opposed?  9 A <b>Correct.</b>  10 Q 3.1 percent didn't know?  11 A <b>Correct.</b>  12 Q At the time this poll was conducted, was  13 the voter photo voter ID requirement in effect?  14 A <b>That is a tricky question.</b>  15 Q Not really.  16 A <b>It was enacted, but I don't believe it was</b>  17 <b>operable.</b>  18 Q Right. But there was -- are you familiar  19 with another Marquette Law School poll that was  20 conducted only weeks before this one?  21 A <b>I think it was conducted in March. Is</b>  22 <b>that the one you're thinking about?</b>  23 Q This was October 9th, 2014.  24 A <b>I'm not. You know, there's a lot of</b>  25 <b>Marquette polls. I'm not sure I can spotlight each</b></p>

<p style="text-align: right;">181</p> <p>1 <b>one of them by the exact date. But if you show it</b>  2 <b>to me, I'm happy to talk about it.</b>  3 Q I just wanted to know if you're aware of  4 that one.  5 A Yeah, I'm aware there are constant  6 Marquette polls.  7 Q Okay. So in terms of the Question 18 and  8 it shows that 60.4 percent of those polled likely  9 voters favored a photo ID requirement, how do you  10 react to that?  11 A Well, we talked about that before. It's  12 not surprising, because most people aren't affected  13 by photo ID. You know, it's -- the minorities,  14 it's -- not all minorities, by any means. Even a  15 minority of minorities who are affected.  16 So, you know, the majority of people have  17 photo IDs, so it doesn't affect them. And there's  18 been a lot of talk about it. And you find this  19 everywhere.  20 But, on the other hand, you also find 56.1  21 percent, almost the same, probably within the margin  22 of error, want to raise the minimum wage. And you  23 don't see the Republican legislature moving to raise  24 the minimum wage.  25 And this is the point I made earlier about</p>	<p style="text-align: right;">183</p> <p>1 that it's summarizing a survey is, "Should voters be  2 required to show official photo ID before they vote  3 on election day."  4 Do you see that?  5 A I do.  6 Q And of all respondents, 77 percent agreed  7 that you should, 95 percent of Republicans agreed  8 that you should, 61 percent of Democrats agreed that  9 you should and 83 percent of independents agreed  10 that you should.  11 A Yeah. Of course. Those are the numbers.  12 Q Okay. And so that's from September 12th  13 through the 16th, 2012, a poll conducted during that  14 time frame. Correct?  15 A That's correct.  16 Q And conducted of registered voters?  17 A It says all registered voters.  18 Q Okay. And I guess what it doesn't state  19 is that whether it's polling nationwide or in just  20 states with strict requirements. Correct? It  21 doesn't say that?  22 A It doesn't.  23 Q So I guess we don't know if it's a  24 national poll or not.  25 But does that -- do those numbers surprise</p>
<p style="text-align: right;">182</p> <p>1 other polling data that I point to in my report as  2 strong or stronger than support for government photo  3 ID, but the legislature is not acting on those  4 things.  5 Q Take a look at Exhibit 7.  6 Do you recognize that exhibit?  7 A God, I've seen so many polls. I don't see  8 a date on this. But ask me questions about it.  9 Q Sure.  10 A September 12th. Yeah, I do see it.  11 Q October 11th, 2012, on the first page, do  12 you see that?  13 A Yes. Okay. Fair enough.  14 Q Very small.  15 MR. SPIVA: Please, is this an excerpt or  16 is it --  17 MR. KAWSKI: I believe it's the -- pulled  18 it from the Pew Research Center website, so it's a  19 summary.  20 MR. SPIVA: Okay. I got it. Okay. I  21 just wanted to know.  22 Q So have you seen this before?  23 A I think so.  24 Q Okay. And so you see the table on the  25 first page there showing the -- the first question</p>	<p style="text-align: right;">184</p> <p>1 you at all?  2 A I suspect, by the way, it's a national  3 number.  4 Q Okay.  5 A No. We've already discussed this at  6 length. I'm not surprised by the fact that the  7 majority should be favoring an idea.  8 And look what it says, "official photo  9 ID." But Wisconsin eliminates lots of official  10 photo IDs. So you certainly could not cite this  11 poll as support for Wisconsin's photo voter ID law,  12 which elaborates the point I made before. You have  13 to look at exactly what these polls are asking  14 people. And they're not necessarily asking people  15 in terms of the specific voter ID law you have in  16 Wisconsin.  17 Q Some of the required forms in Wisconsin  18 are official photo IDs. Correct?  19 A Some, but there are huge ones, like  20 government employee IDs, that are eliminated.  21 Q What about non-official photo IDs that  22 Wisconsin permits?  23 A It does permit -- I'm trying to think what  24 it does permit. I have to look.  25 Q Tribal IDs, for example?</p>

<p style="text-align: right;">185</p> <p>1 <b>A Yes. But I don't think it permits very</b>  2 <b>many non-official IDs.</b>  3 <b>Q</b> In terms of the number of categories in  4 Wisconsin, I believe that -- would it be fair to say  5 there are about nine categories of types of IDs?  6 <b>A Something like that.</b>  7 <b>Q</b> But within those nine categories --  8 <b>A I think I have it in my report.</b>  9 <b>Q</b> I think you do, too. But even within  10 those categories, isn't it fair to say that there  11 are dozens of variants? Some of the categories  12 include dozens of options. Correct?  13 <b>A I don't know what that means. Let's go to</b>  14 <b>the actual. It would be better if we turn to it.</b>  15 <b>Q</b> Sure.  16 <b>A Here it is. Okay. I think it's on Page</b>  17 <b>24.</b>  18 <b>Q</b> Okay. And this is the initial report,  19 Exhibit 1?  20 <b>A Yeah.</b>  21 <b>Q</b> Okay. So Page 24 of Exhibit 1, you list  22 the various forms of ID cards. Correct?  23 <b>A Right. Yeah.</b>  24 <b>Q</b> So, for example, in the -- the military ID  25 card issued by the U.S. uniformed services -- excuse</p>	<p style="text-align: right;">187</p> <p>1 <b>government ID, it would actually make it a lot</b>  2 <b>easier for the poll workers. And all of these</b>  3 <b>distinctions that you have in here in the Wisconsin</b>  4 <b>voter ID law, that departs markedly from laws that</b>  5 <b>have been compared to it, like Georgia and Indiana,</b>  6 <b>where I can present any government-issued ID. Here</b>  7 <b>I can't.</b>  8 <b>Q</b> In one of your reports you have a table  9 that compares the various states. Correct?  10 <b>A I think it's in my rebuttal report. I</b>  11 <b>think it was not my table, it was Hood's table, and</b>  12 <b>I commented on Hood's table.</b>  13 <b>Q</b> Okay.  14 <b>A Are we going to that now?</b>  15 <b>Q</b> Yes. That's on Page 10 of the rebuttal  16 report, which is Exhibit 5.  17 <b>A Okay. Yeah.</b>  18 <b>Q</b> And so the point you're making is that in  19 Georgia there is a category of federal, state, local  20 government employees IDs that Georgia permits,  21 Wisconsin does not. That is one of your points?  22 <b>A Yes. I have many points, but that's one</b>  23 <b>of them.</b>  24 <b>Q</b> Okay. And then I see that Georgia does  25 not permit the U.S. citizenship certificate, but</p>
<p style="text-align: right;">186</p> <p>1 me. You agree that there are several different  2 military ID cards that would be permitted?  3 <b>A Well, obviously Army, Navy, Marines. But</b>  4 <b>you're talking about a tiny percentage. And those</b>  5 <b>differences aren't especially meaningful.</b>  6 <b>Q</b> Okay. What about the college -- college  7 or accredited university ID cards, which you  8 reference on Page 25 of Exhibit 1?  9 <b>A Right. Those are very restrictive.</b>  10 <b>They're not just broadly permitted college IDs.</b>  11 <b>It's got to have the date of issuance, the signature</b>  12 <b>of the students, and expiration date no later than</b>  13 <b>two years, and a separate document.</b>  14 <b>And as we well know from the testimony of</b>  15 <b>the GAB at the time this was adopted, most student</b>  16 <b>IDs in the State of Wisconsin did not conform to</b>  17 <b>these requirements.</b>  18 <b>Q</b> So in selecting so many different  19 categories, though, doesn't it create a challenge  20 for the poll worker who has to familiarize himself  21 or herself with all the forms that are permitted?  22 <b>A No. I don't think it's the number of</b>  23 <b>categories. I think it's the way you define the IDs</b>  24 <b>that are more important.</b>  25 <b>If you simply allowed any official</b></p>	<p style="text-align: right;">188</p> <p>1 Wisconsin does?  2 <b>A That's correct.</b>  3 <b>Q</b> Okay. How do -- I know that this is --  4 you said that Table 16 was Hood's table.  5 Could you describe for me how Virginia's  6 law aligns with these states?  7 <b>A You know, you don't want me doing this</b>  8 <b>from memory. I've been through so many of these</b>  9 <b>laws. But I believe I comment on Virginia's law in</b>  10 <b>here.</b>  11 <b>Q</b> Okay.  12 <b>A So if we can just turn to what I said</b>  13 <b>about it.</b>  14 <b>Q</b> Okay.  15 <b>A I think that would be better than relying</b>  16 <b>on my memory.</b>  17 <b>Ah. Here is what I say about the Virginia</b>  18 <b>law. I do remember.</b>  19 <b>In Virginia you can get a free photo ID</b>  20 <b>without documentation. You just go to the state</b>  21 <b>office and affirm I'm Allan Lichtman and I get a</b>  22 <b>free ID. That's fundamentally different, obviously,</b>  23 <b>than Wisconsin.</b>  24 <b>Q</b> But as we talked about earlier, you didn't  25 remember the number of people that used that option,</p>



<p style="text-align: right;">189</p> <p>1 but it was very small number?</p> <p>2 <b>A I don't remember the number. But it is</b></p> <p>3 <b>available in Virginia. However many use it and will</b></p> <p>4 <b>use it over time, who knows? I don't think there's</b></p> <p>5 <b>been a presidential election yet that's been</b></p> <p>6 <b>conducted in Virginia under the new voter photo ID</b></p> <p>7 <b>law. Which is also in the hands of a judge.</b></p> <p>8 Q Has their law been in place yet, in</p> <p>9 effect?</p> <p>10 <b>A I think just for 2014 and '15.</b></p> <p>11 Q Okay. Let's talk about just a couple</p> <p>12 alternatives that have come up recently as law</p> <p>13 changes that are proposed. One of which is online</p> <p>14 voter registration in Wisconsin. A bill has been</p> <p>15 proposed?</p> <p>16 <b>A Right.</b></p> <p>17 Q Have you followed that?</p> <p>18 <b>A I thought you could do, but maybe I</b></p> <p>19 <b>misread. Maybe I read that a bill was proposed</b></p> <p>20 <b>rather than that being already an option. But I am</b></p> <p>21 <b>happy to take your representation of it.</b></p> <p>22 Q Sure. So you're not aware of the bill,</p> <p>23 the specifics of it?</p> <p>24 <b>A No. Again, I probably, when I was reading</b></p> <p>25 <b>through the material, I thought it was already</b></p>	<p style="text-align: right;">191</p> <p>1 <b>common. You've had a trend in recent years towards</b></p> <p>2 <b>election day registration.</b></p> <p>3 <b>I'm not sure of the exact number now</b></p> <p>4 <b>because it is a moving target. There may be</b></p> <p>5 <b>approximately a dozen states have adopted same-day</b></p> <p>6 <b>registration.</b></p> <p>7 Q And is there also a trend moving towards</p> <p>8 automatically registering voters when they take</p> <p>9 certain actions?</p> <p>10 <b>A Well, I don't know if you would call it a</b></p> <p>11 <b>trend. But Oregon adopted that very recently. And</b></p> <p>12 <b>I believe it was path-breaking for Oregon to do</b></p> <p>13 <b>that. I'm not sure any other state had done that to</b></p> <p>14 <b>that point, at least in modern history.</b></p> <p>15 <b>And I believe it's being considered</b></p> <p>16 <b>elsewhere.</b></p> <p>17 Q And you mentioned that in Maryland you're</p> <p>18 able to vote from your home electronically.</p> <p>19 Correct?</p> <p>20 <b>A I haven't tried it. So I don't know. But</b></p> <p>21 <b>I'm going to try.</b></p> <p>22 Q Is it something new?</p> <p>23 <b>A I've never voted absentee before, so I</b></p> <p>24 <b>can't say.</b></p> <p>25 Q Okay.</p>
<p style="text-align: right;">190</p> <p>1 <b>adopted. But now you're telling me it's just being</b></p> <p>2 <b>considered.</b></p> <p>3 Q Okay.</p> <p>4 <b>A I am not aware of the details of it.</b></p> <p>5 Q Okay. In Wisconsin we have the option of</p> <p>6 same-day registration.</p> <p>7 <b>A That's correct.</b></p> <p>8 Q On election day.</p> <p>9 <b>A Yes.</b></p> <p>10 Q How does that impact, you know, whether</p> <p>11 Wisconsin is a very permissive or not so permissive</p> <p>12 state in terms of its registration practices, in</p> <p>13 your mind?</p> <p>14 <b>A Well, that's, I think -- I don't know</b></p> <p>15 <b>about the word "permissive," it carries certain</b></p> <p>16 <b>connotations to it.</b></p> <p>17 <b>But let's say open state with respect to</b></p> <p>18 <b>registration, absolutely. That's one of the reasons</b></p> <p>19 <b>why Wisconsin has ranked so high on election</b></p> <p>20 <b>administration and ranked so high on voter turnout</b></p> <p>21 <b>as part of my analysis of a system that wasn't</b></p> <p>22 <b>broken and didn't need to be fixed.</b></p> <p>23 Q Is election day registration common or</p> <p>24 uncommon in terms of how many states have it?</p> <p>25 <b>A It's not common, but it's increasingly</b></p>	<p style="text-align: right;">192</p> <p>1 MR. KAWSKI: Why don't we take a break</p> <p>2 now. I'm going to go through my notes, but we're</p> <p>3 almost done.</p> <p>4 MR. SPIVA: Okay. Great.</p> <p>5 (A recess was taken.)</p> <p>6 MR. KAWSKI: I have no further questions.</p> <p>7 MR. SPIVA: Oh, okay. That was easy. All</p> <p>8 right. Thank you. I don't have any questions.</p> <p>9 MR. KAWSKI: All right. We're all set.</p> <p>10 Done.</p> <p>11 COURT REPORTER: Mr Spiva, do you need a</p> <p>12 copy?</p> <p>13 MR. SPIVA: Oh, yes.</p> <p>14 MR. KAWSKI: I just need a PDF copy.</p> <p>15 (Off the record at 2:02 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Debra Ann Whitehead, the officer before whom

3 the foregoing deposition was taken, do hereby

4 certify that the foregoing transcript is a true and

5 correct record of the testimony given; that said

6 testimony was taken by me stenographically and

7 thereafter reduced to typewriting under my

8 direction; that reading and signing was not

9 requested; and that I am neither counsel for,

10 related to, nor employed by any of the parties to

11 this case and have no interest, financial or

12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my hand and

14 affixed my notarial seal this 1st day of May, 2016.

15

16 My commission expires:

17 September 14, 2018

18

19 -----

20 NOTARY PUBLIC IN AND FOR THE

21 DISTRICT OF COLUMBIA

22

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24

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A			
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